

11-10-2014

# Krinitt v. Idaho Dept. of Fish and Game Clerk's Record v. 3 Dckt. 42417

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LAW CLERK

Supplemental

IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

S.C. #42417-2014

**PERRY KRINITT**

*Plaintiff/Appellant*

VS.

**STATE OF IDAHO DEPARTMENT OF  
FISH & GAME AND  
STATE OF IDAHO**

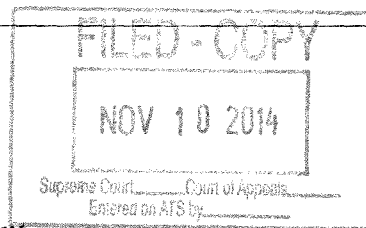
*Defendant/Respondent*

CLERK'S RECORD ON APPEAL

*Appealed from the District Court of the Second Judicial District  
of the State of Idaho, in and for the County of Lewis.*

Charles H Carpenter  
*Attorney for Appellant*

Peter J Johnson  
*Attorney for Respondent*



SEE AUGMENTATION RECORD

42417

IN THE SUPREME COURT OF THE STATE OF IDAHO

Perry Krinitt  
Plaintiff/Appellant

vs.

SUPREME COURT  
NO. 42417-2014

State of Idaho Department of  
Fish and Game and  
State of Idaho,  
Defendant/Respondent.

\*\*\*\*\*

CLERK'S RECORD ON APPEAL—SUPPLEMENTAL

\*\*\*\*\*

Appeal from the District Court of the Second Judicial District  
of the State of Idaho, in and for the County of Lewis.

HONORABLE Michael Griffin

\*\*\*\*\*

Charles H Carpenter

Peter J Johnson

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Lewis County District Court

FILED  
AT 3:00 CLOCK PM

OCT 14 2014

CATHY LARSON  
Clerk of District CourtBy 

PETER J. JOHNSON  
Johnson Law Group  
103 E. Indiana, Suite A  
Spokane, WA 99207-2317  
Phone: (509) 835-5000  
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ISB No. 4105  
Attorney for Defendants

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LEWIS

\* \* \*

PERRY KRINITT,

Plaintiff/Appellant,

Case No.: CV 12-146

v.

Supreme Court No.: 42417-2014

IDAHO DEPARTMENT OF FISH AND  
GAME and STATE OF IDAHO,

REQUEST FOR ADDITIONAL  
RECORD

Defendants/Respondents.

\* \* \*

TO: Appellant and his Attorney, and  
TO: Clerk of the Court

NOTICE IS HEREBY GIVEN, that the Respondents in the above-entitled proceeding hereby request pursuant to Rule 19, I.A.R., the inclusion of the following material in the clerk's record, which were identified in the Notice of Appeal but inadvertently omitted in the Clerk's Record on Appeal which was lodged with the District Court Clerk on October 1, 2014:

Document Title	Date Filed
Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment	01/31/2014



Certificate of Attorney Peter Johnson in Support of Defendants'  
Motion for Summary Judgment

01/31/2014

In addition, Respondents in the above-entitled proceeding hereby request pursuant to Rule 19, I.A.R., the inclusion of the following material in the clerk's record in addition to that required to be included by the I.A.R. and the notice of appeal:

Document Title	Date Filed
Errata Exhibit A to Certificate of Attorney Peter J. Johnson in Support of Defendants' Motion for Summary Judgment	04/16/2014

I certify that a copy of this request was served upon the clerk of the district court or administrative agency and upon all parties required to be served pursuant to Rule 20.

DATED: October 14, 2014.

JOHNSON LAW GROUP

By: 

PETER J. JOHNSON

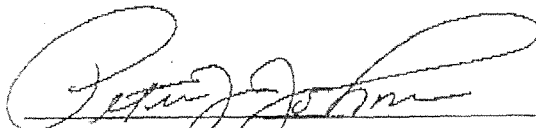
Attorney for Defendants/Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this 14 day of October, 2014, I caused to be served a copy of the foregoing by the method indicated below and addressed to the following:

Charles H. Carpenter  
Carpenter Law Firm, PLC  
210 N. Higgins Avenue, Suite 336  
Missoula, MT 59802  
Phone: (406) 543-0511  
Fax: (406) 258-0365

☐ U.S. Mail  
☐ Hand Delivery  
☒ Facsimile  
☐ Federal Express

  
PETER J. JOHNSON

X:\1760\Appeals Court\PldgREQ - Addl Clerks Recd.wpd

REQUEST FOR ADDITIONAL RECORD - 2

JOHNSON LAW GROUP  
103 E. Indiana, Suite A  
Spokane, WA 99207-2317  
TEL: (509) 835-5000 FAX: (509) 326-7503

FILED  
AT 3:35 O'CLOCK PM

OCT 24 2014

CATHY LARSON  
Clerk of District Court

By [Signature] Deputy

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEWIS

PERRY KRINITT, and ERYN  
KRINITT PERALTA,

Plaintiffs,

vs.

IDAHO DEPARTMENT OF FISH AND  
GAME, and STATE OF IDAHO,

Defendants.

CASE NO. CV 2012-146

ORDER FOR ADDITIONAL  
RECORD

The defendant's petition for additional record is granted and the following documents shall be included in the clerk's record on appeal:

1. Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment filed January 31, 2014.
2. Certificate of Peter Johnson in Support of Defendants' Motion for Summary Judgment filed January 31, 2014.
3. Errata Exhibit A to Certificate of Peter J. Johnson in support of defendants' Motion for Summary Judgment filed April 16, 2014.

Dated this 24 day of October, 2014.

[Signature]  
Michael J. Griffin  
District Judge

CERTIFICATE OF MAILING

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed to, faxed to, or delivered by me on the 24<sup>th</sup> day of October, 2014, to:

Charles H. Carpenter  
Carpenter Law Firm, PLC  
210 N. Higgins Avenue, Suite 336  
Missoula, Montana 59802

1 fax  
U.S. Mail

Peter J. Johnson  
Johnson Law Group  
103 E. Indiana, Suite A  
Spokane, WA 99207-2317

2 fax  
U.S. Mail

Cathy Larson, Clerk of Court

By: [Signature]  
Deputy Clerk

FILED  
AT 4:17 O'CLOCK PM

OCT 27 2014

GATHY LARSON  
DISTRICT COURT  
By *[Signature]* Deputy

Charles H. Carpenter  
Idaho Bar No. 8322  
Carpenter Law Firm plc  
210 N. Higgins Avenue Suite 336  
Missoula, Montana 59802  
(406) 543-0511  
[carpentc@carpenterlawfirmplc.com](mailto:carpentc@carpenterlawfirmplc.com)

Attorney for Plaintiff

IN THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT  
LEWIS COUNTY

PERRY KRINITT	)	No. CV 12-146
	)	
Plaintiff-Appellant,	)	Supreme Court No. 42417-2014
	)	
v.	)	
	)	OBJECTION TO RECORD
IDAHO DEPARTMENT OF	)	
FISH AND GAME, and	)	
STATE OF IDAHO,	)	
	)	
Defendants-Appellees.	)	
_____	)	

Comes now plaintiff/petitioner Perry Krinit and, pursuant to Rule 29(a) of the Idaho Appellate Rules, objects to the record lodged in the district court on October 1, 2014, and received by plaintiff's counsel on October 4, 2014. In his Amended Notice of Appeal, plaintiff/petitioner designated 'exhibits to Plaintiff's Brief in Opposition to Summary Judgment, filed on April 16, 2014' and intended this to include the following errata and corrections to the exhibits originally filed with the motion.

Specifically, plaintiff intended to include the following documents, which were omitted from the record served on October 1, 2014:

Document:

Date Filed:

Excerpt from Errata Exhibit E, Deposition of James Pope-  
pages 29-30

May 2, 2014

Errata Exhibit N, Deposition of Luke Rinebold

May 2, 2014

Although inclusion of these documents in the record on appeal was intended, this was not expressed as clearly as it might have been, and they were consequently omitted from the record served on October 1, 2014. Because they were cited in the summary judgment briefing, it is appropriate that these corrected deposition transcript excerpts be made available to the Supreme Court. Further, the Court recently ordered that errata, among other documents, filed by defendants be included in the record on appeal.

WHEREFORE plaintiff/petitioner objects to the record as served on October 1, 2014, and prays the addition of the excerpts filed as errata described above to the record on appeal. A notice setting this objection for hearing is appended hereto.

DATED this 27th day of October, 2014.

Respectfully submitted,



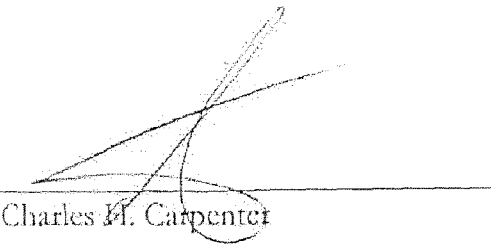
Charles H. Carpenter  
CARPENTER LAW FIRM, plc  
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Telephone: (406) 543-0511  
Facsimile: (406) 258-0365  
[carpentc@carpenterlawfirmplc.com](mailto:carpentc@carpenterlawfirmplc.com)  
*Attorney for Plaintiff/Petitioner*

CERTIFICATE OF SERVICE

I hereby certify on the 27th day of October, 2014, I served the foregoing by mailing a true and correct copy to:

Peter J. Johnson  
JOHNSON LAW GROUP  
103 E. Indiana, Suite A  
Spokane, WA 99207-2317

Clerk of Idaho Supreme Court  
and Court of Appeals  
P.O. Box 83720  
Boise, ID 8372-0101



Charles H. Carpenter

FILED  
AT 1:30 O'CLOCK P.M.

OCT 30 2014

CATHY LARSON  
Clerk of District Court

By

Deputy

IN THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT  
LEWIS COUNTY

PERRY KRINITT

No. CV 12-146

Plaintiff-Appellant,

v.

ORDER

IDAHO DEPARTMENT OF  
FISH AND GAME, and  
STATE OF IDAHO,

Defendants-Appellees.

Pursuant to the Objection to Record, having been filed on October 27, 2014 by  
the Plaintiff/Petitioner, and for good cause shown,

IT IS ORDERED that the Plaintiff's request for the addition of excerpts  
originally filed as errata is granted. Said documents are as follows:

Document:Date Filed:


Excerpt from Errata Exhibit E, Deposition of James Pope-  
pages 29-30

May 2, 2014

Errata Exhibit N, Deposition of Luke Rinebold

May 2, 2014

DATED THIS 20<sup>th</sup> day of October, 2014.

  
\_\_\_\_\_  
Michael J. Griffin  
District Judge



Lewis County District Court  
FILED  
AT 11:51 O'CLOCK AM  
JAN 31 2014

CATHY LARSON  
Clerk of District Court  
By [Signature] Deputy

PETER J. JOHNSON  
Johnson Law Group  
103 E. Indiana, Suite A  
Spokane, WA 99207-2317  
Phone: (509) 835-5000  
Fax: (509) 326-7503  
ISB No. 4105  
Attorneys for Defendants

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LEWIS

\* \* \*

PERRY KRINITT,

Plaintiff,

v.

IDAHO DEPARTMENT OF FISH AND  
GAME and STATE OF IDAHO,

Defendants.

NO. CV 12-146

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT

\* \* \*

COME NOW Defendants, by and through their counsel of record, Peter J. Johnson and Johnson Law Group, and submit this memorandum of points and authorities in support of their motion for summary judgment.

## I. BACKGROUND

On August 31, 2012, Perry Krinitt, Sr., (hereinafter "Krinitt, Sr." or "Plaintiff") filed this action in the District Court for the Second Judicial District of the State of Idaho, Lewis County, seeking damages against the State of Idaho and the Department of Fish and Game (hereinafter

MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT - 1

JOHNSON LAW GROUP  
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TEL: (509) 835-5000 FAX: (509) 326-7503

"IDFG") stemming from the death of his adult son Perry J. Krinitt (hereinafter "Krinitt") in a helicopter crash on August 31, 2010. Krinitt's sister, Erynn Peralta, was initially a plaintiff in the action. However, her claims were dismissed pursuant to a motion for summary judgment.

On August 31, 2010, Krinitt, an employee of Leading Edge Aviation, was the pilot of a Hiller 12E Soloy helicopter contracted to transport IDFG employees Larry Barrett and Danielle Schiff on a salmon survey along the Selway River. Krinitt, Schiff and Barrett met at Leading Edge Aviation in Lewiston, Idaho, that morning and the flight took off from there. Approximately an hour after take off, the helicopter crashed in Kamiah, Idaho. *See* Complaint for Wrongful Death. All three occupants sustained fatal injuries in the crash.

The Hiller helicopter involved in the crash was acquired by James D. Pope (hereinafter "Pope") when he purchased Valley Helicopter Services, L.L.C., from his father. Pope Deposition, p. 24, ll. 2-3.<sup>1</sup> Pope also owns Leading Edge Aviation, L.L.C., which also used the Hiller helicopter. Pope Deposition, p. 23, ll. 22-25; pp. 24, ll. 1-4.

The Hiller helicopter underwent several modifications from its original configuration. It had been modified from a four-seat configuration to a three-seat configuration prior to Pope's purchase. Pope Deposition, p. 146, ll. 15-25; p. 147, 1-17. In addition, the standard doors on the Hiller had been changed to "bubble" doors prior to Pope purchasing it. Pope Deposition, p. 32, ll. 2-25. The latch system on the bubble doors was different than on Hiller-manufactured doors. Pope Deposition, p. 31, ll. 3-9. Also, the latch mechanism on the right bubble door at the time of the crash was different than the latch that was on the left door of the helicopter. Pope Deposition, p. 116, ll. 17-25; p. 117, ll. 1-7.

---

<sup>1</sup> Copies of the portions of deposition transcripts cited are provided with the Certificate of Attorney filed in this memorandum.

## II. PLAINTIFF'S CONTENTIONS

Krinit, Sr., contends that IDFG employee Danielle Schiff (hereinafter "Schiff") became airsick and, as the helicopter approached Kamiah, Idaho, to land, Schiff opened the door of the helicopter causing a clipboard to exit the helicopter. The clipboard then struck the tail rotor of the helicopter, causing it to separate resulting in the helicopter crash. *See Complaint for Wrongful Death.*

## III. DEFENDANTS' POSITION

IDFG submits that Krinit, Sr., has failed to produce any admissible or relevant evidence demonstrating Schiff's conduct was a proximate cause of this tragedy. Specifically, Krinit, Sr., has not produced any evidence that Schiff became airsick or that she opened the door of the helicopter. Instead, he relies upon nothing more than mere conjecture and speculation as to what Schiff's acts or omissions might have been. Beyond this speculation and conjecture, he has not offered any admissible or relevant evidence. Accordingly, summary judgment is mandated.

## IV. STANDARD OF REVIEW

Summary judgment is proper where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c). The party moving for summary judgment initially carries the burden to establish that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. *Eliopoulos v. Knox*, 123 Idaho 400, 404, 848 P.2d 984, 988 (Ct. App. 1992). This burden may be met by establishing the absence of evidence on an element that the non-moving party will be required to prove at trial. *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994). Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the non-moving party's evidence and the contention that such proof of an element is lacking. *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000). Once such an

absence of evidence has been established, the burden then shifts to the party opposing the motion to show, through depositions, discovery responses or affidavits, that there is indeed a genuine issue for trial or to offer a valid justification for the failure to do so under I.R.C.P. 56(f). *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct. App. 1994).

More importantly, in a summary judgment proceeding, the non-moving party may not rest upon the mere allegations or denials of the pleadings, but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing there is a genuine issue for trial. I.R.C.P. 56(e). *East Lizard Butte Water Corp. v. Howell*, 122 Idaho 679, 681, 837 P.2d 805, 807 (1992). Affidavits must set forth facts that would be admissible as evidence. Furthermore, any responses provided for by I.R.C.P. 56(e) must identify evidence which creates a genuine issue for trial. *Id.*

In determining whether an issue of material fact exists, the court is to liberally construe the facts in the existing record in favor of the non-moving party, and is to draw all reasonable inferences from the record in favor of the non-moving party. *Anderson v. Ethington*, 103 Idaho 658, 660, 651 P.2d 923, 925 (1982). However, even though the court will draw reasonable inferences in favor of the non-moving party, the non-moving party cannot rest upon mere speculation. *Finholt v. Cresto*, 143 Idaho 894, 896-97, 155 P.3d 695, 697-98 (2007). The non-moving party must submit more than conclusory assertions that an issue of material fact exists to withstand summary judgment. *Id.*

Summary judgment is appropriate when the non-moving party bearing the burden of proof fails to make a showing sufficient to establish the existence of an element essential to the party's case. *Carnell v. Barker Mgmt., Inc.*, 137 Idaho 322, 327, 48 P.3d 651, 656 (2002).

#### IV. LEGAL ANALYSIS

##### A. PLAINTIFF FAILS TO ESTABLISH AN ESSENTIAL ELEMENT OF HIS CLAIM.

In Idaho, a cause of action in negligence requires proof of the following: (1) the existence of a duty, recognized by law, requiring the defendant to conform to a certain standard of conduct; (2) a breach of that duty; (3) a causal connection between the defendant's conduct and the resulting injury; and (4) actual loss or damage. *Antim v. Fred Meyers Stores, Inc.*, 150 Idaho 774, 251 P.3d 602 (2011).

When deciding a motion for summary judgment, a court will only consider evidence contained in affidavits and depositions which is based upon personal knowledge and would be admissible at trial. *Harris v. State, Dep't of Health & Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992). The showing of a mere scintilla of evidence is insufficient to meet the non-moving party's burden to demonstrate a genuine issue of fact for trial. *Edwards*, 111 Idaho at 853, 727 P.2d at 1281. Finally, summary judgment must be granted if evidence offered in opposition to the motion is merely colorable or is not significantly probative. *Nelson v. Steer*, 118 Idaho 409, 410, 797 P.2d 117, 118 (1990).

In this action, there is no evidence as to what caused the bubble door of the helicopter to open. More importantly, there is no evidence that Schiff voluntarily or purposely opened the door while the helicopter was in flight. Finally, and most importantly, there is no evidence that Schiff became sick and, as a result, voluntarily and purposely opened the door of the helicopter while it was in flight. Krinitt, Sr., has merely presented a theory as to the cause of the opening of door which is supported only with speculation and conjecture. Speculation and conjecture do not raise a genuine issue of material fact.

B. NEGLIGENCE CANNOT BE ESTABLISHED BY SPECULATION OR CONJECTURE.

Krinit, Sr., has the burden of proving all the elements of his negligence action by a preponderance of evidence. Negligence is a fact to be proven either by direct or circumstantial evidence and is not presumed on conjecture or speculation. *Osier v. The Consumers Co.*, 41 Idaho 268, 239 P. 735 (1925). The Idaho Supreme Court has discussed circumstantial evidence in *Dent v. Hardware Mut. Casualty Co.*, 86 Idaho 427, 388 P.2d 89 (1963):

[I]n discussing the question of the sufficiency of the record to sustain a judgment for plaintiff in a negligence action, the majority opinion stated...

"Circumstantial evidence is competent to establish negligence and proximate cause. Facts, which are essential to a liability for negligence, may be inferred from circumstances which are established by evidence. But, where circumstantial evidence is relied upon, the circumstances must be proved, and not themselves be left to presumption or inference. (Citations.) This court has held that inference cannot be based upon inference, nor presumption on presumption. (Citations.)

"The underlying principle applicable here is that a verdict cannot rest on conjecture; that where a party seeks to establish a liability by circumstantial evidence, he must establish circumstances of such nature and so related to each other that his theory of liability is the more reasonable conclusion to be drawn therefrom; and that where the proven facts are equally consistent with the absence, as with the existence, of negligence on the part of defendant, the plaintiff has not carried the burden of proof and cannot recover. (Citations).

"Where it remains equally probable from a consideration of all of the evidence, that the injury resulted from the cause suggested by the defendant, as from that suggested by the plaintiff, the plaintiff has not established his case."

*Dent v. Hardware Mut. Casualty Co.*, 86 Idaho at 433-434, (citing *Splinter v. City of Nampa*, 74 Idaho 1, 10, 256 P.2d 215, 220). (Emphasis added.)

As articulated by *Dent*, there is a vast difference between circumstantial evidence and pure speculation. Krinitt, Sr., attempts to present circumstantial evidence to show a mere possibility that Schiff may have opened the door of the helicopter because she became sick. Asserting this possibility as "fact" and then theorizing circumstances which are potentially consistent with this possibility, he attempts to establish this alleged conduct by Schiff as an act of negligence. However, when you remove from consideration Plaintiff's speculation, there is absolutely no admissible evidence that Schiff opened the door for any reason.

In a summary judgment setting, a court must only consider material contained in affidavits or depositions which is based upon personal knowledge and which would be admissible at trial. I.R.C.P. 56(c); *Petricevich v. Salmon River Canal Co., Inc.*, 92 Idaho 865, 452 P.2d 362 (1969):

"Flimsy or transparent contentions, theoretical questions of fact which are not genuine, or disputes as to matters of form do not create genuine issues which will preclude summary judgment. Neither is a mere pleading allegation sufficient to create a genuine issue as against affidavits and other evidentiary materials which show the allegation to be false. *A mere scintilla of evidence is not enough to create an issue; there must be evidence on which a jury might rely*. A popular formula is that summary judgment should be granted on the same kind of showing as would permit direction of a verdict were the case to be tried." (Emphasis added.) (at pp. 132-133)

*Petricevich*, 92 Idaho at 871 citing 3 Barron & Holtzoff, Federal Practice and Procedure, § 1234, p. 133 (Rules ed. 1958).

The evidence in this case does not change the speculative nature of Plaintiff's theory that Schiff purposely opened the door. Extensive discovery has been conducted including numerous depositions and interrogatories. Two individuals on the ground who saw the descent of the helicopter and the aftermath of the crash, Luke Rinebold and Nathan Heston, have testified in their depositions

that at some point during the helicopter's flight over Kamiah, the right bubble door of the helicopter was in an open position. See Certificate of Attorney and attached pages of Depositions of Luke Rinebold and Nathan Heston. However, neither Rinebold nor Heston, nor any other individual, has testified that they saw the right-side passenger, who was Schiff, open the door. Because the door was open at some point, Plaintiff speculates that Schiff must have purposely opened it. Contrary to his speculation that Schiff opened the door, there is absolutely no evidence that she did so. It is pure conjecture as to what occurred to cause the door to open.

Krinit, Sr., bases his claim of negligence on the part of Schiff solely upon a speculative belief that she must have opened the door of the helicopter because she got airsick. See Complaint for Wrongful Death, ¶ 12. However, he has not produced even a scintilla of evidence in support of this speculation. In lieu of any such evidence, he has based his claim on an inference, which is based upon another inference and which is then based upon another inference:

- Inference 1: the SeaBand which was in the external cargo rack belonged to Schiff (Complaint for Wrongful Death, ¶ 12);
- Inference 2: therefore, Schiff got airsick (Complaint for Wrongful Death, ¶ 12);  
and
- Inference 3: therefore, Schiff opened the door of the helicopter (Complaint for Wrongful Death, ¶ 12).

Again, there is no evidence to support any of these inferences.

It is well-settled law that inference cannot be based upon inference, nor presumption on presumption. *Splinter v. Nampa*, 74 Idaho 1, 11, 256 P.2d 215 (1953). Furthermore, mere conjecture and speculation cannot be indulged in to establish negligence or proximate cause. *Cooper v. Oregon Short Line R. Co.*, 45 Idaho 313, 262 P. 873 (1927); *Antler v. Cox*, 27 Idaho 517, 149 P. 731 (1915).



The lack of evidence in this case leaves the cause of the door opening entirely to conjecture speculation.

Proof of a bare possibility that an injury may be due to a given cause does not justify a finding that it was so caused. The evidence must furnish some logical basis for a finding that the result was probably due to the alleged cause. ... Where the testimony leaves the matter uncertain, it is not for the jury to speculate or guess that the negligence of the defendant was the cause, when there is no satisfactory foundation in the testimony for that conclusion. As quoted favorably by this court in *Holt v. Spokane etc. Ry. Co.*, 4 Idaho 443, 40 P. 56:

Every party to an action at law has a right to insist upon a verdict or finding based upon the law and the evidence in the case, and not, in the absence of the evidence, upon mere inference, conjecture or personal experience.

*Macaw v. Oregon S. L. R.R.*, 49 Idaho 151, 157-158, 286 P. 606 (1930).

## V. CONCLUSION

To defeat summary judgment, Plaintiff's claim of negligence must not be premised upon speculation or inference. If one eliminates from consideration inadmissible speculation, conjecture or inference, there is absolutely no evidence that Schiff opened the door of the helicopter or that she became sick. Absent any evidence that Schiff played any part in causing the bubble door of the helicopter to open, Plaintiff fails to raise a genuine issue of material fact as to an essential element of his negligence claim against Schiff.

In summary, this accident was tragic for all those involved, but there is nothing more than conjecture and speculation to suggest that Schiff was negligent. Questions of how and when the door of the helicopter became opened are too speculative to be decided by a jury. In summary, Krinitt, Sr., has failed to make a showing sufficient to establish the existence of an essential element of his case and on which he bears the burden of proof at trial. Therefore, summary judgment as a matter of law is appropriate. *Carnell v. Barker Mgmt., Inc.*, 137 Idaho at 327.

DATED: January 31, 2014.

JOHNSON LAW GROUP

By: 

PETER J. JOHNSON

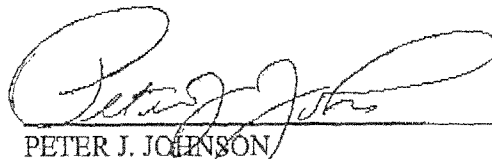
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 31<sup>st</sup> day of January, 2014, I caused to be served a copy of the foregoing by the method indicated below and addressed to the following:

Charles H. Carpenter  
Carpenter Law Firm, PLC  
210 N. Higgins Avenue, Suite 336  
Missoula, MT 59802  
Phone: (406) 543-0511  
Fax: (406) 258-0365

☐ U.S. Mail  
☐ Hand Delivery  
☒ Facsimile  
☐ Federal Express

  
PETER J. JOHNSON

IX:\176\PI\g\MEM - Summary Judgment (Liability).wpd

MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT - 10

JOHNSON LAW GROUP  
103 E. Indiana, Suite A  
Spokane, WA 99207-2317  
TEL: (509) 835-5000 FAX: (509) 326-7503

Lewis County District Court

FILED  
AT 15:00 CLOCK AM

JAN 31 2014

CATHY LARSON  
Clerk of District CourtBy [Signature] Deputy

PETER J. JOHNSON  
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ISB No. 4105  
Attorneys for Defendants

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LEWIS

\* \* \*

PERRY KRINITT and ERYN KRINITT  
PERALTA,

Plaintiffs,

v.

IDAHO DEPARTMENT OF FISH AND  
GAME and STATE OF IDAHO,

Defendants.

\* \* \*

STATE OF WASHINGTON

ss.

County of Spokane

PETER J. JOHNSON, being first duly sworn on oath, depose and state:

I am the attorney for Defendants herein.

Attached hereto as Exhibit A are true and correct copies of pages from the deposition of Jim  
Pope, Jr. which was taken on July 10, 2013;

Attached hereto as Exhibit B are true and correct copies of pages from the deposition of Luke  
Rinebold, which was taken on September 25, 2013; and


CERTIFICATE OF ATTORNEY - 1

JOHNSON LAW GROUP

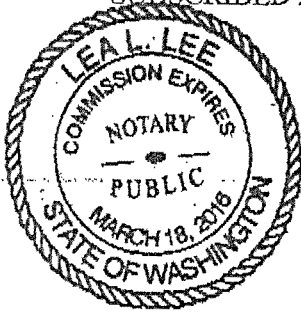
103 E. Indiana, Suite A  
Spokane, WA 99207-2317

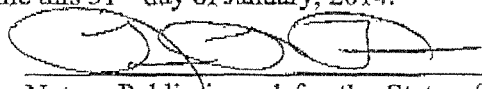
TEL: (509) 835-5000 FAX: (509) 326-7503

Attached hereto as Exhibit C are true and correct copies of pages from the deposition of  
Nathan Heston, which was taken on September 25, 2013.

  
PETER J. JOHNSON

SUBSCRIBED AND SWORN before me this 31<sup>st</sup> day of January, 2014.




  
Notary Public in and for the State of Washington,  
residing at Spokane  
My Commission expires: 03/18/2016

### CERTIFICATE OF SERVICE

I hereby certify that on this 31<sup>st</sup> day of January, 2014, I caused to be served a copy of the foregoing by the method indicated below and addressed to the following:

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PETER J. JOHNSON

IXA1760:PldgNCERT - Attorney (SJM - 2).wpd

**EXHIBIT A**

1 IN THE SECOND JUDICIAL DISTRICT,  
2 SITTING WITHIN AND FOR NEZ PERCE COUNTY,  
3 STATE OF IDAHO  
4  
5 CYNTHIA K. BARRETT, surviving }  
6 spouse of LAWRENCE T. BARRETT, }  
7 deceased, and PATRICIA B. SCHIFF, }  
8 surviving parent of DANIELLE J. }  
9 SCHIFF, deceased }  
10 Plaintiffs, }  
11 vs. } NO. CV 2012-01704  
12 LEADING EDGE AVIATION, L.L.C., }  
13 an Idaho limited liability company; }  
14 VALLEY HELICOPTER SERVICE, L.L.C., }  
15 an Idaho limited liability company }  
16 HARRY M. CRAVOTTO, currently doing }  
17 business as Aurora Services, and }  
18 JOHN DOE CORPORATIONS 1 THROUGH 10, }  
19 Defendants. }

20 TRANSCRIPT OF THE DEPOSITION OF JIM POPE, JR.  
21 HAD ON THE 10TH DAY OF JULY, 2013, AT 9:00 AM  
22  
23  
24  
25

REPORTED BY: KRISTIE LYNN EVANS, RPR, CSR NO. 661

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kkreport@wildblue.net

1

1 Q. How long did Lewis Clark, LLC, was actively  
2 in business?  
3 A. Three, four months.  
4 Q. And what time period was that?  
5 A. I don't recall the dates. I would have to  
6 look at the date of activation of the LLC.  
7 Q. Was that within 2012, 2013?  
8 A. No. It was before that.  
9 Q. I take it that Lewis Clark, LLC, is not an  
10 active LLC?  
11 A. It's not effectively functioning as a  
12 business.  
13 Q. Okay. It may still technically be a --  
14 A. It is maintained.  
15 Q. When you say that Belle Canyon, LLC, operates  
16 aircraft what do you mean by that?  
17 A. We are ensuring a helicopter under that name  
18 and operating an aircraft under that name. Currently  
19 it is an Instron helicopter.  
20 Q. Okay, and what kind of aircraft?  
21 A. An Instron helicopter.  
22 Q. Just the one?  
23 A. Just one.  
24 Q. Okay. Is Leading Edge still functioning as a  
25 business?

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1 A. I don't know. I assume it's me. I don't  
2 believe Vicky is involved in that one.  
3 Q. All right. What is the purpose -- what is  
4 the business purpose of Belle Canyon, LLC?  
5 A. The purpose of Belle Canyon, LLC, is a  
6 separate entity to ensure aircraft.  
7 Q. Does Belle Canyon, LLC, own aircraft?  
8 A. No.  
9 Q. Does it operate aircraft?  
10 A. Yes.  
11 Q. And Lewis and Clark, LLC, what is the purpose  
12 of that business entity?  
13 A. It was set up as a training school.  
14 Q. Do you operate a training school through that  
15 entity?  
16 A. Not effectively.  
17 Q. Okay.  
18 A. No.  
19 Q. Have you tried to operate a training school?  
20 A. Yes.  
21 Q. Have you discontinued the training school?  
22 A. Yes.  
23 Q. And was that a training school for helicopter  
24 pilots?  
25 A. Yes.

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1 in the Lewiston area?  
2 A. Yes. We lived a lot of other locations, too,  
3 with my mother.  
4 Q. And what was your -- well, tell me a little  
5 bit about your Army career, if you would. What did you  
6 do in the Army?  
7 A. I was a 67 November Huey crew chief.  
8 Q. What does that mean? What does a crew chief  
9 do?  
10 A. A crew chief is a flying mechanic. He  
11 maintains the aircraft and flies with the aircraft when  
12 it flies as a crew member.  
13 Q. Okay. Did you ever pilot helicopters in the  
14 Army?  
15 A. No.  
16 Q. Where were you stationed in the Army?  
17 A. Fort Sill, Oklahoma; Fort Rucker, Alabama;  
18 Lottin, Oklahoma; and Camp Casey, Korea.  
19 Q. And when were you discharged?  
20 A. Spring of '87.  
21 Q. And you received an honorable discharge?  
22 A. So far.  
23 Q. So far?  
24 A. Yes.  
25 Q. Are you in the Army Reserves?

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16

1 A. No.  
2 Q. Okay. On the Huey -- other than the Huey  
3 would you perform mechanic work on other types of  
4 helicopters?  
5 A. Not in the Army.  
6 MR. SCHUEGL: Just a second. At what time?  
7 Q. (By Mr. Callery) While in the Army.  
8 A. No.  
9 Q. What did you do after you got out of the  
10 Army?  
11 A. I worked for Valley Helicopter Service.  
12 Q. That was your father's business here in  
13 Lewiston?  
14 A. Yes.  
15 Q. And your father was operating it in '87?  
16 A. Yes.  
17 Q. He hired you?  
18 A. Yes.  
19 Q. What did you do for Valley Helicopter

20 Service?  
21 A. I was ground support and eventually worked  
22 into a mechanic position.  
23 Q. Did you eventually become a pilot?  
24 A. Yes.  
25 Q. Did you have formal training to become a

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17

1 pilot?  
2 A. Yes.  
3 Q. Could you tell me what that was?  
4 A. I traded work on a Miller for initial pilot  
5 training in Bend, Oregon, and then finished my  
6 commercial license in classic helicopters in Boeing  
7 Field in Seattle.  
8 Q. Was that an actual school or was that an  
9 individual instructor in Bend, Oregon?  
10 A. Individual instructor.  
11 Q. And how about when you moved to Boeing Field?  
12 A. A school.  
13 Q. What was the name of that school?  
14 A. I thought it was Classic.  
15 Q. Classic. Excuse me. Classic Helicopters?  
16 A. Yeah.  
17 Q. And as a result of completing that you have a  
18 commercial pilot's license?  
19 A. Yes.  
20 Q. Okay. Do you have any additional licenses  
21 or certificates or endorsements beyond that?  
22 A. Beyond rotorcraft?  
23 Q. Yes.  
24 A. I have fixed-wing commercial.  
25 Q. When did you obtain your rotorcraft

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1 commercial license?  
2 A. I don't know. I can pull my license out.  
3 Q. Sometime in the late '80s?  
4 A. In the late '80s.  
5 Q. And how about your fixed-wing commercial,  
6 late '80s as well?  
7 A. In the early '90s.  
8 Q. Did you have formal training for that?  
9 A. Inter-State Aviation in Pullman.  
10 Q. Is that school still in existence?  
11 A. It is.  
12 Q. Do you know who runs it?  
13 A. Doug Cadwa.  
14 Q. Do you keep track of how many total hours  
15 you, yourself, personally have as a pilot in command of  
16 a helicopter?  
17 A. Yes.  
18 Q. Do you know what that is right now?  
19 A. Somewhere between 23 and 24,000.  
20 Q. Hours?  
21 A. (Nods head affirmatively) Yes, 23 to 24,000  
22 hours approximately.  
23 Q. What helicopters do you currently, either  
24 through Leading Edge or Valley Helicopter or your other  
25 LLCs, currently own?

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1 A. Not Valley.  
2 Q. You had not yet purchased Valley Helicopter?  
3 A. That's correct.  
4 Q. Did your father consult with you about the  
5 installation of the bubble doors?  
6 A. Nope.  
7 Q. Did you have any input on that project?  
8 A. Nope -- no.  
9 Q. Were you operating 67264 at the time?  
10 A. No.  
11 Q. Did your father ever tell you why he had the  
12 bubble door installation made?  
13 A. The same reasons I gave you previously:  
14 visibility and room and bad doors.  
15 Q. Had there been problems with the original  
16 door latch to the point that he wanted to make a  
17 modification?  
18 A. I assume.  
19 Q. If you know.  
20 A. I would assume that would be one of the  
21 primary reasons.  
22 Q. The inadvertent door opening?  
23 A. (Nods head affirmatively.)  
24 Q. Is that a yes?  
25 A. That is a yes.

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1 Q. Okay. Do you have any information that  
2 subsequent to the bubble door installation that the  
3 latch assembly was in any way further modified at a  
4 later date?  
5 MR. SCHOEGL: Let me just object to the form,  
6 unless you further specify what you mean by modify.  
7 MR. CALLERY: Changed.  
8 MR. SCHOEGL: You can answer.  
9 A. Normal maintenance. Is that changing it?  
10 No. I don't know of any other modification made to the  
11 door.  
12 Q. (By Mr. Callery) Do you know if the striker  
13 plate on the latch assembly on the right side was  
14 replaced after its installation by Mr. Cravotto?  
15 A. I have no recollection associated to any  
16 replacement of the latch on the right-hand side.  
17 Q. Specifically the striker plate?  
18 A. Yeah. I don't know of any replacement of  
19 that, no.  
20 Q. It appears that the strike plate on the right  
21 side is made out of aluminum, and the strike plate on  
22 the left side is made out of steel. Would you agree  
23 with that?  
24 A. After seeing the pictures of the accident  
25 wreckage, yes.

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1 which could occur either by being physically bumped by  
2 the person seated next to the door or by the handle  
3 getting caught in/by that person's clothing, sleeve, or  
4 particularly if the clothing was loose fitting. The  
5 Hiller representative stated that for those reasons he  
6 considered the latch design to be unsafe. When you  
7 read the report, I take it you saw that?  
8 A. Yes.  
9 Q. Would you agree or disagree with that  
10 statement?  
11 A. I disagree with the statement.  
12 Q. Why?  
13 A. It's an opinion.  
14 Q. What is your opinion concerning the latch  
15 assembly being susceptible to inadvertent activation?  
16 A. It is a similar location to many other  
17 helicopters.  
18 Q. Have you — when you piloted the 67264 have  
19 you ever had a passenger or a pilot get their clothing  
20 caught in the handle?  
21 A. Not caught.  
22 Q. When you say not caught, what do you mean?  
23 A. Well, what is the definition of caught? Hung  
24 up.  
25 Q. Have you ever had it hung up?

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1 Q. Okay. You hadn't noticed that prior to the  
2 accident pictures?  
3 A. No.  
4 Q. Do you have any information about an aluminum  
5 strike plate being installed after Mr. Cravotto's  
6 installation?  
7 A. No. I don't know of anything associated with  
8 a replacement of that striker plate in question.  
9 MR. SCHOEGL: Tom, when you get to a convenient  
10 stopping point let's take a break.  
11 MR. CALLERY: Sure. Let's stop.  
12 (Recess at 10:07 a.m.)  
13 (Reconvened at 10:13 a.m.)  
14 Q. (By Mr. Callery) All right. We are ready to  
15 get back on the record. We are back on the record. We  
16 took a ten-minute break, so we are going to continue  
17 on, Mr. Pope. Have you reviewed the NTSB report with  
18 regard to this crash?  
19 A. Yes.  
20 Q. I'm going to quote a little bit of it just to  
21 see if I can get your response to that, okay, and this  
22 is page 11 of the 12 pages. The installed latches were  
23 operated by handle rotation. Examination of the  
24 installed latch mechanisms revealed that the handle  
25 appeared to be susceptible to inadvertent activation

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1 Q. Was Shannon Kninitt in the office when the  
2 initial greet occurred?  
3 A. No.  
4 Q. Had she already gone to Selway Falls?  
5 A. Yes.  
6 Q. She was driving a fuel truck?  
7 A. Yes.  
8 Q. Okay. Any other employees on August 31,  
9 2010?  
10 A. No.  
11 MR. SCHOEGL: Just so we are clear, when you say  
12 any other employees, do you mean people who were  
13 actually on the payroll that day being paid or do you  
14 mean --  
15 A. Part-time.  
16 MR. SCHOEGL: Anybody who was available for  
17 work?  
18 MR. CALLERY: Anybody on the payroll.  
19 A. No.  
20 Q. (By Mr. Callery) Okay. Was there anybody  
21 who was available for work that wasn't actively  
22 working?  
23 A. Yes.  
24 Q. Who would that be?  
25 A. We have multiple capture team members in the

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1 A. Anything that I could think of that was not  
2 mentioned by the other two pilots.  
3 Q. Do you recall what that was?  
4 A. No.  
5 Q. Do you recall what Perry Krinitt went over in  
6 the briefing?  
7 A. All aspects of operation of the aircraft and  
8 the mission ahead.  
9 Q. Could you be specific?  
10 A. You are asking me to pull off memory of a  
11 briefing three years ago.  
12 Q. To the best of your ability.  
13 A. Securing items in the cockpit, articles of  
14 clothing and their operation including zipping pockets,  
15 gloves. Went over clipboards and operational control  
16 of those items.  
17 Q. What did he say about clipboards?  
18 A. He said you need to maintain operational  
19 control at all times.  
20 Q. What did he say about items in the cockpit?  
21 A. They need to be secured at all times.  
22 Q. Did he give examples of how that would be  
23 done?  
24 A. Zippered in pockets completely, or worn as  
25 appropriate to the clothing item, secured any item in

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1 Q. Have you done it with doors on?  
2 A. Not that I recall.  
3 Q. Why were the doors on on August 31, 2010?  
4 A. It was more comfortable for the ferry flight  
5 early in the morning.  
6 Q. It was chilly that day?  
7 A. It wasn't chilly, I don't believe.  
8 Q. Okay. It wasn't wintertime?  
9 A. No, it was not.  
10 Q. You are talking about the flight from your  
11 facility up to Selway Falls?  
12 A. Yes.  
13 Q. Was there a discussion about doors on or off  
14 at the briefing?  
15 A. Yes.  
16 Q. Did someone make a request to keep the doors  
17 on?  
18 A. It was a group decision by the individuals  
19 that were going to be taking the flight.  
20 Q. Did Mr. Krinitt ask either Schiff or Barrett  
21 what their preference was?  
22 A. Yes.  
23 Q. Who did he ask?  
24 A. Both.  
25 Q. What did they say?

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1 Q. Do you think we've covered the briefing to  
2 the best of your recollection?  
3 A. No, no.  
4 Q. Well, go on then.  
5 A. That was the indoor briefing, and we also did  
6 a briefing at the aircraft associated with the direct  
7 operating systems of the aircraft.  
8 Q. You think we've covered the indoor briefing  
9 to the best of your recollection now?  
10 A. To the best of my recollection. It was an  
11 extended briefing.  
12 Q. You don't have any notes or anything like  
13 that about the briefing, do you?  
14 A. I do not.  
15 Q. So there was a briefing out at the helipad,  
16 correct?  
17 A. Correct.  
18 Q. And who gave that briefing?  
19 A. Perry Krinitt.  
20 Q. Who was there for that briefing?  
21 A. Perry, Mike Atchison, myself, and the two  
22 observers.  
23 Q. And what did Mr. Krinitt cover at the helipad  
24 briefing?  
25 A. Operations around the helicopter, static and

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1 flight following that they would notice when something  
2 happens?  
3 A. Their only job is not to just sit and watch  
4 that alone. They have other missions that they perform  
5 as well. This is secondary to those other missions.  
6 Q. Do you, as a general rule, follow your  
7 helicopters on automatic flight following?  
8 A. Most of the time I can't help it.  
9 Q. You are interested in what's happening?  
10 A. (Nods head affirmatively.)  
11 Q. Is that a yes?  
12 A. Yes.  
13 Q. There is information in the NTSB report that  
14 says that the automatic flight following was supposed  
15 to be -- the signal was supposed to be broadcast every  
16 two minutes, and in this helicopter was broadcast every  
17 six minutes. Do you have any information concerning  
18 that?  
19 A. I have a speculation is all.  
20 Q. What is that?  
21 A. It was not updated from the spraying mode.  
22 MR. CARPENTER: I am sorry, I didn't hear you.  
23 From the what mode?  
24 A. Spraying mode.  
25 MR. CARPENTER: Spraying. Okay. Thank you.

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**EXHIBIT B**

IN THE SECOND JUDICIAL DISTRICT,  
SITTING WITHIN AND FOR LEWIS COUNTY,  
STATE OF IDAHO

FERRY KRINITI and  
ERIN KRINITI PERALIA,

Plaintiffs,

vs.

IDAHO DEPARTMENT OF  
FISH AND GAME, and  
STATE OF IDAHO,

Defendants.

NO. CV 2012-146

TRANSCRIPT OF THE DEPOSITION OF LUKAS RINEBOLD  
HAD ON THE 25TH DAY OF SEPTEMBER, 2013, AT 3:15 PM

REPORTED BY: KRISTIN LYNN EVANS, RPR, CSR NO. 661

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1

1 helicopter there was a guy that had the door open  
2 (indicating.) And I don't know what he was doing. It  
3 looked like he was going to try to jump or something.  
4 They were still way up there. And he had the door  
5 open, and I could see him for a second. And I don't  
6 know if it was trying to fix something or do something  
7 or whatever he was doing, and then it spun back around  
8 where I couldn't see him. And then when it came back  
9 around where I could see that side again he was back in  
10 the helicopter with the door closed.

Q. What parts of the guy could you see?

A. I could just -- I could see his helmet, and  
he had -- I'm color blind -- it was either a brown or a  
green suit. So -- and that's it. I could just see  
kind of his suit, his arm, and his helmet.

Q. And from the perspective of the -- you know,  
if you were in the helicopter looking forward was this  
the right or the left door?

A. The right door.

Q. Did you see the door open or was it --

A. No.

Q. -- open when you saw it?

A. It was open when it spun around to where I  
could see it.

Q. Had you been able to see the right side door

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13

1 like, come on, let's go look, you know. I was kind of  
2 like, oh, didn't really want to go at first, you know,  
3 because I was pretty sure I knew what the outcome was.  
4 He says, let's go. And I says, well, let's go get that  
5 piece first. So we hopped in the truck. We drove over  
6 to -- it was right on the main road as you come into  
7 Kamiah there, the place I saw fall. I watched where it  
8 landed. And we went over and grabbed that, and then we  
9 went over to the wreck.

Q. Where was the piece?

A. It was right -- it was landed basically right  
at the front door -- I think it is a body shop as you  
come into Kamiah on the right side.

Q. On the right side of Highway 12?

A. Correct.

Q. So, across Highway 12 from where you were?

A. Yes.

Q. Which of you picked up the piece from the  
ground?

A. Pretty sure I did.

Q. And what did you do with it?

A. We threw it in the truck. Didn't really  
think much of it. Kind of looked at it, and then I was  
going to, you know, give it to them guys later. I  
don't know if it just spaced it or whatever, but we

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15

1 Q. Now, you saw that a door had opened on the  
2 helicopter; is that right?

A. Uh-huh (affirmative.)

Q. Was this before or after you heard the loud  
boom?

A. It was after.

Q. Okay. Are you able to tell definitively  
whether the door had been opened prior to the loud  
boom?

A. Not for sure. I mean, it could have been  
open, but the only time, you know -- when it spun  
around I could see that the guy was standing up in  
there had the door pushed out. So, I mean, but it  
could have been open when it spun around. It could  
have been jacked open a little bit or whatever, and I  
just couldn't tell that so.

Q. Okay. Now when you were describing sort of  
your orientation, and you used the term, I think,  
flying at a 7:00 direction. I want to make sure I  
understand that. So are you facing south when you  
first see the helicopter or --

A. I'm facing west. So, if I'm facing west and  
I'm looking at 12:00, it is kind of flying at my 7:00  
(indicating.)

Q. Okay. In that orientation are you able to

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1 see the right side of the helicopter? When I say right  
2 I'm talking about if you are sitting in the helicopter  
3 looking forward.

4 A. No.

5 Q. Okay. So when you are looking at the  
6 helicopter at that point is it fair to say that you  
7 can't tell how the door is situated on that right side?

8 A. Correct.

9 Q. Okay. Now, is it correct that you testified  
10 that you observed the helicopter rotating once or twice  
11 before you observed the door open; is that right?

12 A. Yes.

13 Q. Did it do a full rotation to allow you to see  
14 it or was it sort of half rotated and you could see the  
15 door?

16 A. I don't remember for sure how far they turned  
17 in those first couple, but I mean it could have been  
18 just a half turn before it turned all the way around to  
19 where I could see that that door was opened all the  
20 way.

21 Q. Prior to the loud boom did you see any  
22 objects separating and falling from the helicopter?

23 A. No.

24 Q. After the loud boom you've testified about  
25 one piece falling?

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1 Q. Did you have conversations with him that you  
2 can recall?

3 A. Well, like I said, I just told him kind of  
4 what I saw and where I found the piece and all that,  
5 and that was about it.

6 Q. Did the FAA person tell you anything about  
7 what he thought the piece was or the relevance of it?

8 A. No.

9 MR. FEITERS: All right. I think that's all I  
10 have.

CROSS-EXAMINATION

11 BY MR. BALLY:

12 Q. My name is Jon Bally, and I represent one of  
13 the parties in this suit. I just want to go over a few  
14 things with you. You testified that after the bang you  
15 then looked up and you could start seeing the  
16 helicopter fishtail a little bit; is that correct?

17 A. Correct.

18 Q. And is it kind of a twisting back and forth?

19 A. Right.

20 Q. And at one point in time it twisted enough  
21 that you could see somebody holding open, or at least  
22 arm extended out, holding onto the right-hand door,  
23 correct?

24 A. Correct.

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1 Q. And how many times, from the time you first  
2 saw it fishtail until the time you saw the door open?

3 A. I would say it turned, you know, two to three  
4 times.

5 Q. And was each turn about the same degree or  
6 did it start out slight turns and then become more  
7 extreme?

8 A. Yes. It started out slight turns and then  
9 became, as it came down, it became larger turns.

10 Q. And from the point that you first thought the  
11 helicopter was coming towards, I guess, your 7:00,  
12 correct?

13 A. Correct.

14 Q. Based on that direction, so that point in  
15 time were you able to see the right-hand door?

16 A. As it was coming in?

17 Q. Yes.

18 A. Yes -- or, no, I mean, I wasn't able to see  
19 -- before the bang, no, I was not able to see the right  
20 door.

21 Q. Then after the bang was the first time you  
22 were able to observe the right-hand door, is that when  
23 you saw it open?

24 A. Well, no. It was a couple turns, like I  
25 said, before I was able to see. You know, it spun a

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1 couple times before I was able to see the right side.

2 Q. Okay, but was the first time you were able to  
3 see the right-hand door, was that when it was open?

4 A. I'm not sure if it spun around all the way  
5 that way or not.

6 Q. Was it fishtailing in such a fashion that had  
7 the door been opened up where you could actually see  
8 the arm that you think you would have seen it in an  
9 open position?

10 A. If the guy was -- yeah, I mean, if the guy  
11 was hanging out like he was I would have been able to  
12 see.

13 Q. And so when you are saying the guy was  
14 hanging out, the position of the helicopter was such  
15 could you see into the helicopter?

16 A. No.

17 Q. The door was open up to where you could see  
18 the arm, though?

19 A. Correct.

20 Q. The distance as far as the position of the  
21 door when you first noticed that it was open, had it  
22 been opened that extent when the helicopter was  
23 beginning to twist do you think you would have noticed  
24 it?

25 A. I think I would have, and, no, I don't think

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1 probably just doesn't want to hear about it.  
 2 Q. So you talked to Mr. Atchison on one  
 3 occasion?  
 4 A. Yeah.  
 5 Q. Was that shortly after the accident?  
 6 A. It seemed like it was a while after the  
 7 accident. I worked for him one summer spraying for a  
 8 little while, and as far as I remember it was when we  
 9 were out spraying in the field one time he asked me  
 10 about it.  
 11 Q. Did Mr. Atchison ever express his opinion  
 12 about the cause of the accident to you?  
 13 A. Yes, he did.  
 14 Q. What did he say to you?  
 15 A. He thought that the gal that they took -- I  
 16 forget her name -- he said that he thought that they --  
 17 she was getting sick, possibly, is what they thought.  
 18 And she may have opened her door to throw up, and  
 19 that's when the clipboard may have come out of the  
 20 helicopter and went through the tail rotor.  
 21 Q. Okay. You wrote a statement to the FAA, is  
 22 that correct?  
 23 A. Gosh, I don't know. It's been so long ago.  
 24 Probably.  
 25 Q. Well, I'm going to show you what has been

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1 at the Burkhardt Homes?  
 2 A. There was one of the tenants I know I  
 3 remember hearing him say, you know, Oh my God or  
 4 whatever when the helicopter was coming down, but I  
 5 don't even remember who it was really.  
 6 Q. Your statement, the statement Exhibit 39,  
 7 indicates that you saw the door -- a person opening the  
 8 door; is that correct?  
 9 A. Well --  
 10 Q. You can certainly refer to it.  
 11 A. When it spun around I saw the door was open.  
 12 I didn't see them opening the door.  
 13 Q. If you would look at Exhibit 39 which you  
 14 said is your statement, and I believe it is one, two,  
 15 three, four, five, six lines down you state: Once the  
 16 helicopter was about halfway to the ground from its  
 17 original altitude it spun around where I could see the  
 18 right side of the helicopter and noticed a person  
 19 opening the door and leaning out.  
 20 A. Okay.  
 21 Q. That's what you wrote at that time, correct?  
 22 A. Well, I shouldn't have wrote opening. It was  
 23 open, and the person was leaning out so --  
 24 Q. So that was -- you shouldn't have used the  
 25 word opening, then?

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1 A. Correct.  
 2 Q. Now your memory is is that the door was  
 3 already opened when you first saw it?  
 4 A. Correct. I did not see somebody opening it.  
 5 I shouldn't have used that word there.  
 6 Q. Do you think that you have a good  
 7 recollection -- you think you have a better  
 8 recollection of this now than you did?  
 9 A. Well, probably not. It has been, what, three  
 10 to four years.  
 11 Q. Did you notice -- did you testify that it  
 12 looked like someone was thinking of jumping? Was that  
 13 the impression that you were given?  
 14 A. Well, the guy when he had the door open he  
 15 was standing up in the helicopter leaning way out  
 16 there.  
 17 Q. Standing full up in a vertical position?  
 18 A. He had to have been, yes.  
 19 Q. Okay.  
 20 A. Or, you know, at least part of the way off of  
 21 his seat, you know. He may not have been standing all  
 22 the way up, but he wasn't sitting down with just the  
 23 door open. He was leaning out too far for that.  
 24 Q. How far open was the door?  
 25 A. It was all the way forward, as far as he

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1 could get it.  
 2 Q. Could you estimate how open the door was in  
 3 feet?  
 4 A. Three feet.  
 5 Q. It is almost completely open almost a  
 6 90-degree opening?  
 7 A. More than 90.  
 8 Q. More than a 90-degree opening?  
 9 A. I would say, yes.  
 10 Q. Could you tell if the seatbelt was still on?  
 11 A. I couldn't tell that, but it sure didn't look  
 12 like it. I wouldn't think he could get that far out  
 13 with a seatbelt on.  
 14 Q. And if he wasn't standing full up he was  
 15 somewhere between a seated position and full vertical  
 16 standing up?  
 17 A. Correct.  
 18 Q. And if the door is three feet open he's got a  
 19 large portion of his upper body outside the physical  
 20 confines of the helicopter, correct?  
 21 A. Correct, correct, and that's why I told them  
 22 I could see the brown or green suit, whatever he had,  
 23 and his helmet. I could see the whole --  
 24 Q. Could you tell if it was a man or a woman?  
 25 A. Could not tell.

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1 Q. You have said his or him or something. You  
2 don't have an --

3 A. I don't. I don't. It was a him or a her.

4 Q. It is your testimony that -- your testimony  
5 is that you had no opportunity to see the right side  
6 door until after the bang?

7 A. Correct.

8 Q. When you watched it approach, come over the  
9 ridge, it was at such an angle it would have been  
10 impossible for you to see the door?

11 A. Correct.

12 Q. Even though the door -- would have been  
13 impossible for you to see the door open at a 90-degree  
14 angle like that?

15 A. Say that one more time.

16 Q. You've testified the door was basically  
17 completely open, correct?

18 A. Yes (nods head affirmatively.)

19 Q. Even in a completely open position you  
20 wouldn't have been able to see that as it came over the  
21 ridge?

22 A. Oh, I got you. Yeah, I probably would have  
23 been able to see it if it was open as far as it was  
24 when I did see it.

25 Q. Did you see the door close eventually?

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1 A. That's correct.

2 Q. And the first time that you noticed the door  
3 open was on about the third -- I don't remember if you  
4 said second or third or third or fourth one of these  
5 gyrations, correct?

6 A. Correct.

7 Q. So, the helicopter had spun with its right  
8 side to you and its left side to you on at least two to  
9 three occasions, maybe four, and that's when you saw  
10 the person with the door open, correct?

11 A. Correct. But like I told him, I don't  
12 remember for sure if that thing had spun all the way  
13 around to where I could see the right side or not. It  
14 may have spun to where I could see straight at the  
15 tail.

16 Q. You just don't know as you sit here today, is  
17 that a fair statement?

18 A. Correct. Yes.

19 Q. Okay, I'm also a little confused or need  
20 some clarification: At the time that you were at the  
21 scene, if I understood your testimony correctly, you  
22 did not know that the helicopter that had been involved  
23 was one from Leading Edge, is that a fair statement?

24 A. Correct. Yeah, I did not know that.

25 Q. Help me understand: Why was it that when you

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1 A. (Nods head affirmatively.)

2 Q. And then heard the boom and when you turned  
3 around then the helicopter was down to about 1500 feet  
4 and within a half mile to three quarters of a mile of  
5 you, correct?

6 A. Yes.

7 Q. You didn't see anything strike the  
8 helicopter, correct?

9 A. No. Correct.

10 Q. In your statement it says: I saw pieces  
11 flying off around the tail rotor. Today you said you  
12 saw one piece. Did you see multiple pieces coming from  
13 the helicopter or just the one piece?

14 A. Just the one piece for sure. You know, you  
15 look up there and you hear a big bang, I just saw the  
16 one big piece mainly coming down. So, I mean, there  
17 may have been more that were smaller, you know, that I  
18 couldn't see from that distance, but I could definitely  
19 watch the one big one.

20 Q. Okay, and the big piece that you are talking  
21 about is that the piece that you have later described  
22 picking up in the front door of the auto building  
23 there?

24 A. Correct. Yes.

25 Q. Okay, and you saw that piece when you turned

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1 A. Perfect.

2 Q. So you called Mike or Jim because you thought  
3 they would be able to tell you what to do with this  
4 piece; is that right?

5 A. Yes, yes.

6 Q. You also indicated that at some point -- I'm  
7 a little unclear here, too -- as the helicopter was  
8 making these fishtail movements after you saw the door  
9 open, at some point you saw the door close, correct?

10 A. Correct.

11 Q. Did you actually see anybody close the door  
12 or did you just notice that it was closed?

13 A. No. Like I said, it spun around again to  
14 where I couldn't see that side and then when it spun  
15 back around the door was closed. I don't know if it  
16 was all the way closed or just, you know, against the  
17 side of the helicopter not latched or whatever.

18 Q. So within the confines of a spin in the  
19 opposite direction and spin back the door was now  
20 closed, correct?

21 A. Correct.

22 Q. All right. I apologize if you have been  
23 asked this question with six people, and my memory, you  
24 know, I don't remember. But had you ever ridden in  
25 that helicopter?

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1 you don't mention it in your statement -- the person  
2 that had the door open. It says the person -- you said  
3 you noticed a person opening the door and leaning out.  
4 Did you notice the person's leg or either leg?  
5 A. No. I mean, I could see maybe to the thigh.  
6 I couldn't see their leg.  
7 Q. Couldn't see from the knee down where that  
8 was?  
9 A. No.  
10 Q. And could you see where the arm was?  
11 A. The arm had the door extended (indicating.)  
12 Q. All right. You kind of went at about a  
13 45-degree angle, or a 60-degree angle?  
14 A. Yeah.  
15 Q. What angle was the arm extended?  
16 A. I don't know -- 45 or whatever.  
17 Q. Holding the top of the door?  
18 A. Yes. That's what it looked like.  
19 Q. All right, but you didn't see what the arm  
20 did when the door came back?  
21 A. Nope.  
22 MR. ANEGON: Okay. I think that's all I have,  
23 Mr. Reinbold. Thank you.  
24 A. Okay. Yeah.

25 REDIRECT EXAMINATION

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1 A. No.  
2 Q. Have you ever had a problem with a door  
3 opening inadvertently when you were doing a capture?  
4 A. No.  
5 Q. Did you ever have anything fly out of a  
6 helicopter while you were in it?  
7 A. Nope.  
8 Q. Have you ever had a hard landing in a  
9 helicopter?  
10 A. No.  
11 Q. Have you ever been involved in a crash in a  
12 helicopter?  
13 A. No, I have not.  
14 Q. The person when they were standing up or  
15 mostly vertical, right, correct --  
16 A. Correct.  
17 Q. They weren't heading over?  
18 A. No.  
19 Q. Correct?  
20 A. Correct.  
21 Q. They weren't leaning out with their head down  
22 in any way, correct?  
23 A. Correct.  
24 Q. Okay. You didn't see the person getting sick  
25 or anything happening in that respect, did you?

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1 BY MR. CARPENTER:  
2 Q. This won't be long.  
3 A. Okay.  
4 Q. When you just testified that the person was  
5 holding the top of the door, is that -- if you can  
6 recall -- the middle of the top, the corner of the top,  
7 the top edge? Do you have a recollection of what that  
8 was?  
9 A. Well, it is kind of the corner of the top, I  
10 would say. Not -- the door is round, of course,  
11 usually, rounded, and it would be where it breaks over  
12 and starts coming down probably at the corner there.  
13 MR. CARPENTER: All right. That's it for me.  
14 RECROSS-EXAMINATION  
15 BY MR. FEITERS:  
16 Q. In any of our phone calls do you have a  
17 specific recollection of me saying anything about  
18 audibly recording our communications?  
19 A. I do not remember.  
20 Q. Do have you any basis at all to think that I  
21 recorded any of our communications?  
22 A. No.  
23 MR. FEITERS: Okay. No further questions.

24 RECROSS-EXAMINATION

25 BY MR. CALLERY:

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1 A. Nope.  
2 MR. CALLERY: Thank you.  
3 MR. BALLY: It's getting narrowed down here.  
4 A. Running out, huh.  
5 RECROSS-EXAMINATION  
6 BY MR. BALLY:  
7 Q. Going to Exhibit 39, it states that the  
8 helicopter then started spinning side to side about 180  
9 degrees. I just want to clarify something. The first  
10 time that it started spinning in a direction that you  
11 could see the right side did it make -- did it spin the  
12 first time about 180 degrees?  
13 A. The first time I don't -- no, I don't think  
14 it did. As far as I remember the first time it spun  
15 away from me so I would be looking at the tail rotor.  
16 Q. The left side of the helicopter?  
17 A. Straight up the tail, the tail.  
18 Q. What direction did it spin the first time?  
19 A. To the south. So to the right. If you are  
20 sitting there it would have spun to the right.  
21 Q. So as it spun to the right you would have  
22 been seeing the left side of the helicopter, then?  
23 A. Well, I was seeing the left side as it was  
24 coming in, and then as the bang happened it spun and  
25 turned away from me pointing south. I would have been

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## EXHIBIT C



1 IN THE SECOND JUDICIAL DISTRICT,  
2 SITTING WITHIN AND FOR LEWIS COUNTY,  
3 STATE OF IDAHO  
4  
5 PERRY KRINITT and  
6 ERYN KRINITT PERALTA,  
7  
8 Plaintiffs,  
9  
10 vs. NO. CV 2012-146  
11 IDAHO DEPARTMENT OF  
12 FISH AND GAME, and  
13 STATE OF IDAHO,  
14  
15 Defendants.

16  
17 TRANSCRIPT OF THE DEPOSITION OF NATHAN HESTON  
18 HAD ON THE 25TH DAY OF SEPTEMBER, 2013, AT 1:18 PM  
19

20  
21  
22  
23  
24 REPORTED BY: KRISTI LYNN EVANS, RPR, CSR NO. 661  
25

APPEARANCES

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1 Q. Did you see the door opening?  
2 A. Yes.  
3 Q. So it was closed and then it opened?  
4 A. Yeah, I think so. It opened, and then it  
5 circled -- or spun again and went away from us and when  
6 it came back around the door was shut.  
7 Q. And you saw the foot of someone from the  
8 helicopter?  
9 A. I believe so. Like the -- because how it was  
10 spinning in the air you could kind of see just opening  
11 the door and kind of indecisive, I mean, of whether he  
12 was going to jump or -- I don't know what he was trying  
13 to do.  
14 Q. How high was the helicopter at that point?  
15 A. I would say probably gone down a little bit,  
16 probably 350 feet or so.  
17 Q. It was still going up and down?  
18 A. It was quite a ways up, yeah.  
19 Q. Was the helicopter still going up and down?  
20 A. Yes.  
21 Q. At that point?  
22 A. Uh-huh (affirmative.)  
23 Q. What happened next?  
24 A. It kept spinning, and as it was spinning it  
25 was kind of moving all around. And it got to a certain

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1 Q. How high above the ground was the helicopter?  
2 A. Still probably in the 400-foot range. I  
3 don't know for sure. It is hard to say.  
4 Q. And was it circling from where you were  
5 standing clockwise or counterclockwise?  
6 A. I think it would be counterclockwise, if I  
7 remember correctly.  
8 Q. Was it spinning as well as circling?  
9 A. That's what I mean. It was spinning, like  
10 the helicopter was just spinning in the air  
11 (indicating.) It wasn't going in circles. It was  
12 actually spinning in the air, I guess, would be the  
13 correct term.  
14 Q. And was it falling or holding up?  
15 A. It was all over the place. I mean, it was up  
16 and down and --  
17 Q. Up and down?  
18 A. -- floating. You could tell he was trying to  
19 keep control of it.  
20 Q. Okay. Could you see the doors of the  
21 helicopter at that point?  
22 A. At one point when it was circling, or  
23 spinning, I guess, I looked up and, yes, I saw a door  
24 open and what I would assume was a man kind of putting  
25 his foot out like he was going to jump out.

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1 so I've just kind of always been into that. I am  
2 always one of those people that always looks up when I  
3 see one.  
4 Q. When you first heard it did it sound like the  
5 engine or any aspect of the helicopter was in distress  
6 or in an emergency?  
7 A. No. I would say maybe the rotor noise was a  
8 little loud but --  
9 Q. But when you first heard it there was no  
10 indication that it was in distress?  
11 A. No.  
12 Q. Okay. When was the first point that you  
13 realized that there was something wrong with the  
14 helicopter?  
15 A. Sometime between the time, I would say, when  
16 I heard the noise and kind of looked up, then stuff  
17 started -- I noticed that it was flying weird, kind of,  
18 and then the pieces started coming off. And the  
19 bang -- I don't remember the tale of events exactly. I  
20 was just working, and then I was running. So, I wasn't  
21 really, I don't know -- guess I didn't put it away well  
22 enough to remember the exact circumstances but --  
23 Q. You testified that at one point you saw one  
24 of the doors open on the helicopter?  
25 A. Uh-huh (affirmative.)

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1 Q. If you are sitting in the cockpit looking  
2 forward would it have been on the right side or the  
3 left side of the helicopter?  
4 A. I think that it was on the right-hand side  
5 because if it would have been spinning counterclockwise  
6 then that would make sense to me.  
7 Q. Okay. You mentioned hearing a loud boom?  
8 A. Uh-huh (affirmative.)  
9 Q. Did that loud boom occur before or after you  
10 saw the door open?  
11 A. I think that it was -- I don't know for sure.  
12 and I hate to say 100%. But I think that it was before  
13 I saw the door open.  
14 Q. Now, you testified that your original  
15 position at the Burkhardt Homes, you looked up at the  
16 helicopter and at some point you moved to another  
17 location?  
18 A. Yeah. I had my back to it, actually, and I  
19 looked like -- kind of was looking around, and I turned  
20 around behind me and watched it for a second  
21 (indicating.) And then I started just running to the  
22 other side.  
23 Q. And the second position that you moved to,  
24 was that also at Burkhardt Homes?  
25 A. Yes, yes.

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1 arm and maybe a leg, but I don't remember for sure.  
2 Q. Now, did you see any objects separating from  
3 the helicopter prior to seeing the door open?  
4 A. I think so, yes. I think that it was -- well,  
5 it is really hard to say.  
6 Q. Are you able to tell from which location the  
7 helicopter those objects separated, from the tail area  
8 from the cockpit area?  
9 A. From the tail, I would say.  
10 Q. From the point of the door being open and  
11 then you talked about the piece that sort of fluttered  
12 down, how much time was in between those two events?  
13 A. I would say the whole incident was 40  
14 seconds, 45 seconds, not that long.  
15 Q. How long did it take for you to get from your  
16 initial location at Burkhardt to where Luke Rinsbold was  
17 standing? How many seconds did it take to get there?  
18 A. Probably not very long, probably 10, 15  
19 seconds, running as fast as you can. It wasn't very  
20 far.  
21 Q. Okay. Now, when this door opening that you  
22 saw was going on what does the engine sound like?  
23 A. The engine sounded okay, I mean, but at that  
24 point the tail rotor was gone. So, he had no control  
25 of the helicopter, and so he was just kind of floating

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1 Q. Okay. Now, when you saw the door opened were  
2 you at that second location?  
3 A. Yes.  
4 Q. When you heard the boom were you at that  
5 second location?  
6 A. I think I was between, kind of running, but I  
7 don't -- like I said, I don't know for sure.  
8 Q. Where was Luke Rinsbold at?  
9 A. Luke was standing -- he was over there  
10 already. I ran to him, essentially, and as far as I  
11 know he was watching the whole thing so --  
12 Q. Okay. What caused you to run to that new  
13 location? Was it because you realized the helicopter  
14 was in distress?  
15 A. Yes, yes.  
16 Q. Okay. When the door was opened can you  
17 describe any more about what you saw, a foot was  
18 sticking out?  
19 A. Yeah. Like someone was just kind of -- if  
20 you have ever been in a helicopter they are kind of  
21 hard to get in and out of, and it looked to me like he  
22 was basically kind of deciding to jump or not.  
23 Q. Did you see any part of the torso, upper body  
24 leaning out or anything?  
25 A. Not that I remember. I think it was just an

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19

1 Q. All right. What's your date of birth?  
2 A. 5/31/1989.  
3 Q. Tell me how old that makes you.  
4 A. Twenty-four.  
5 Q. All right. He's 24, too?  
6 A. No. He's 28 or so -- 30, maybe. He was a  
7 neighbor of ours.  
8 Q. He was your neighbor growing up?  
9 A. Yes.  
10 Q. All right, and so when you talked to him a  
11 month ago about this what did you talk about?  
12 A. Nothing in particular, really. We talked  
13 about the door opening because I asked him because it's  
14 been so long I was wondering if I had thought if maybe  
15 the boom was before or after that because I was  
16 wondering and --  
17 Q. A month ago just out of the blue you were  
18 wondering about that?  
19 A. I think about this all the time.  
20 Q. Okay.  
21 A. I didn't sleep for a long time after it.  
22 Q. Because you witnessed the accident?  
23 A. Yes.  
24 Q. Why were you wondering about that one  
25 particular thing after all this time?

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1 really weird sounding, too.

2 Q. And then was a door open when you first saw  
3 it or did you actually see the door physically open?

4 A. If I remember correctly it had opened and  
5 then turned away from us or spun around.

6 Q. When you say it had opened, did you actually  
7 see a door opening?

8 A. Yes.

9 Q. With a person's hand on the door?

10 A. Like I said, I would assume so. Then I saw  
11 an arm and a hand and possibly a foot, like they are  
12 stepping out.

13 Q. Was that a man or a woman?

14 A. I don't know for sure. I would assume it was  
15 a man, but I don't know for sure.

16 Q. When you say would you assume it is a man did  
17 it look like a man or a woman?

18 A. I do not know, sir. That was a long time  
19 ago. So, that's why I am saying I would assume that it  
20 was, but I don't know for sure. I didn't see --

21 Q. You assume it was because you just think men  
22 are more likely to be in helicopters than women or  
23 because of something that you saw?

24 A. I don't have an answer to that, I guess.

25 Q. Color hair, size --

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1 reach very far so --

2 Q. But it wasn't opened an inch or two?

3 A. No. It was opened a little ways.

4 Q. Your best estimate is a foot?

5 A. Somewhere around there, yes, because like I  
6 said, I think that I saw a foot coming out of it so it  
7 would have to be opened a little ways for that to  
8 happen.

9 Q. A foot like dangling?

10 A. Possibly or maybe trying to step on the  
11 skid -- I don't know for sure. Something that  
12 triggered me to think that he was possibly trying to  
13 jump.

14 Q. It was 3 or 400 feet at that point, though,  
15 correct, when the foot -- when the door was opened?

16 A. I would say somewhere around there -- high.

17 Q. And you think that was the right side?

18 A. I think so, yes.

19 Q. Right side being face forward in the  
20 helicopter?

21 A. Yes.

22 Q. Now, you and Luke Rinebold are now in the  
23 field. You then ran to his pickup truck?

24 A. Uh-huh (affirmative.)

25 Q. Is that correct?

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1 A. No. I wasn't anything like that. It was  
2 quite a ways away, and I was really excited so I didn't  
3 pay that close of attention.

4 Q. Then after the helicopter will made another  
5 rotation you saw it close, you saw the door close?

6 A. It actually had opened and then went away  
7 from us so that the opposite door is showing to us, and  
8 when it turned back around again it was closed.

9 Q. Did you see anything fly out of the door?

10 A. No.

11 Q. In your mind it looked like someone was  
12 considering jumping?

13 A. Yes.

14 Q. Were they leaning -- somewhat leaning out the  
15 door?

16 A. I think so, but I do not remember for sure.  
17 So, that's kind of one of the things that has bothered  
18 me for a long time is, you know, what would cause  
19 someone to jump out of a helicopter at 350, 400 feet in  
20 the air, like so it is just kind of that's what bugs me  
21 so that's --

22 Q. So how wide was the helicopter door open?  
23 Can you estimate that?

24 A. It wasn't very far, probably 12 inches or so.  
25 I mean, because if you are sitting in it you can't

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1 you first looked at it, because you heard this funny  
2 rotator wash sound, did you see any doors open?

3 A. No.

4 Q. Did you see anything falling off the  
5 helicopter?

6 A. Not that I can recall.

7 Q. Okay, but was it at this point in time when  
8 you first saw it, because of the funny rotator wash,  
9 that you noticed that it was flying -- I think you used  
10 the words, flying in kind of a weird way, or flying  
11 weird?

12 A. Yes. It just didn't look very stable, I  
13 guess would be a way to put it. It was just going all  
14 over the place. Not -- normally when you see a  
15 helicopter they are going a general direction, a  
16 general speed. This wasn't like that. It was --  
17 looked like it was out of control basically.

18 Q. So it was because of that funny wash sound  
19 and when you looked at it, the flying weird like it  
20 wasn't in control, the thought in your mind was, this  
21 helicopter is in distress or something to that nature,  
22 correct?

23 A. Yes.

24 Q. And so that was what caused you to start  
25 running toward the field?

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1 is that the boom occurred after you first saw it and  
2 while you are running to the field to get a better  
3 view?

4 A. Yes.

5 Q. All right, and then at that point your next  
6 recollection is that the helicopter may have already  
7 started to go into this spin that you've described?

8 A. I think so, yes.

9 Q. And it was during the time that it was in the  
10 spin was when you first observed that a door was  
11 opened?

12 A. Yes.

13 Q. Or opening, correct?

14 A. Yes.

15 Q. And that was after the boom?

16 A. Yes, as far as my recollection goes.

17 Q. I know we are asking you to recount things  
18 that happened over three years ago. You are doing just  
19 fine, so I appreciate that. And then it was during  
20 this time that you were in the field and the helicopter  
21 had started spinning that you started noticing pieces  
22 basically falling out of the sky?

23 A. Yeah. At some point between the time when I  
24 stopped -- or the boom and then I stopped, then stuff  
25 was just flying off the helicopter, little chunks, and

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1 Q. At that point was he descending?

2 A. Like I had said, he was kind of going up and  
3 down, possibly.

4 Q. But you heard the bang, but before you got to  
5 like you heard the bang?

6 A. Uh-huh (affirmative.) Yes.

7 Q. Okay, and then after that then he was going  
8 up and down and spinning?

9 A. Yeah, but when I turned around and looked up  
10 he was flying erratically, like I think I had said. He  
11 was just kind of flying differently. It didn't look  
12 like it was under control necessarily.

13 Q. When you saw the person open the door, or  
14 when you think you saw the person open the door, did  
15 they -- you said you couldn't tell whether it was a man  
16 or a woman?

17 A. No.

18 Q. You saw a flight suit on them and a helmet?

19 A. I don't remember for sure.

20 Q. You don't remember. Okay. According to  
21 Exhibit 36 here when did you see the helicopter drop to  
22 the ground? In other words, when he was doing this  
23 gyration when did he actually -- when did the  
24 helicopter fall?

25 A. He had -- when he was rotating around here

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1 estimated it was about three quarters of a mile away  
2 from you as the crow flies and about 400 feet high; is  
3 that correct?

4 A. Somewhere in that vicinity, yes.

5 Q. And as you got out into the field it was  
6 still in the neighborhood of, what, 3 to 350 feet in  
7 the air above you?

8 A. Somewhere around there, and it was going up  
9 and down during that time, too.

10 Q. And when you say up and down, could you tell  
11 about how much it was going up and down? Were you able  
12 to judge, was it dropping 20 feet, coming back up, or  
13 were you able to even get an estimate?

14 A. I couldn't tell you.

15 Q. It looked like it was bobbing?

16 A. Yes.

17 Q. Would it be fair to say that from your  
18 observations -- and we've talked about this door  
19 opening -- do you know whether or not the person that  
20 was seated next to that door that you saw open, opened  
21 the door or the door came open on its own?

22 A. Like I said, I think that I saw a hand and  
23 possibly a foot coming out, so I think that the person  
24 had opened the door.

25 Q. All right.

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1 read it, check her work or want to waive. I have no  
2 opinion one way or the other.

3 A. Honestly, I would rather just be done with  
4 it. Like I have nothing to prove. I have no side,  
5 nothing. I'm just saying what I remember. It was a  
6 horrible experience in my life and, you know, that's  
7 all I want to say, I guess.

8 Q. So is that a waiver?

9 A. That's a waiver, yes.

10 Q. Okay. That's fair enough. So, I would leave  
11 as quickly as I can before somebody else --

12 MR. CRAVITTO: I have got one more question.

13 MR. JOHNSON: You weren't quick enough.

14 CROSS-EXAMINATION

15 BY MR. CRAVITTO:

16 Q. From the time you heard the bang, previous to  
17 that did you ever see a door open on that helicopter?

18 A. No, no.

19 MR. CRAVITTO: Okay. That's all I have.

20 (Deposition concluded at 2:41 p.m.)

21 (Signature waived.)

22 - - - - -

23

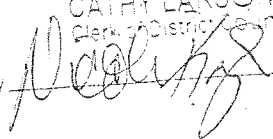
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Lewis County District Court  
**FILED**  
 AT 1:32 O'CLOCK P.M.  
 APR 16 2014

CATHY LARSON  
 Clerk of District Court  
 By  Deputy

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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF LEWIS

\*\*\*

PERRY KRINITT,

Plaintiff,

NO. CV 12-146

v.

IDAHO DEPARTMENT OF FISH AND  
 GAME and STATE OF IDAHO,

ERRATA EXHIBIT A TO  
 CERTIFICATE OF ATTORNEY  
 PETER J. JOHNSON IN SUPPORT OF  
 DEFENDANTS' MOTION FOR  
 SUMMARY JUDGMENT

Defendants.

\*\*\*

COME NOW the Defendants and file this errata of Exhibit A to the Certificate of Attorney Peter J. Johnson In Support of Defendants' Motion for Summary Judgment. The correct pages of the Transcript of the Deposition fo Jim Pope, Jr. taken on July 10, 2013 are attached hereto as referenced in the Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment.

Pages 1, 22, 23, 24, 25, 31, 32, 116, 117, 146 and 147.

DATED: April 16, 2014.

JOHNSON LAW GROUP

By 

PETER J. JOHNSON  
 Attorney for Defendants

JOHNSON LAW GROUP

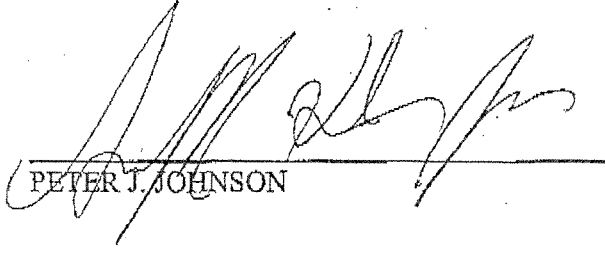
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CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> day of April, 2014, I caused to be served a copy of the foregoing by the method indicated below and addressed to the following:

Charles H. Carpenter  
Carpenter Law Firm, PLC  
210 N. Higgins Avenue, Suite 336  
Missoula, MT 59802  
Phone: (406) 543-0511  
Fax: (406) 258-0365

☐ U.S. Mail  
☐ Hand Delivery  
☒ Facsimile  
☐ Federal Express

  
\_\_\_\_\_  
PETER J. JOHNSON

\\EXA1760\pjd\gERRATA (Ex A).wpd

**EXHIBIT A**

1 IN THE SECOND JUDICIAL DISTRICT,  
2 SITTING WITHIN AND FOR NEZ PERCE COUNTY,  
3 STATE OF IDAHO  
4

5 CYNTHIA K. BARRETT, surviving )  
6 spouse of LAWRENCE T. BARRETT, )  
7 deceased, and PATRICIA E. SCHIFF, )  
8 surviving parent of DANIELLE J. )  
9 SCHIFF, deceased )  
10 )  
11 Plaintiffs, )  
12 )  
13 vs. ) NO. CV 2012-01704  
14 )  
15 LEADING EDGE AVIATION, L.L.C., )  
16 an Idaho limited liability company;) )  
17 VALLEY HELICOPTER SERVICE, L.L.C., )  
18 an Idaho limited liability company )  
19 HARRY M. CRAVIOTTO, currently doing) )  
20 business as Aurora Services, and )  
21 JOHN DOE CORPORATIONS 1 THROUGH 10,) )  
22 )  
23 Defendants. )  
24 )  
25

16 TRANSCRIPT OF THE DEPOSITION OF JIM POPE, JR.  
17 HAD ON THE 10TH DAY OF JULY, 2013, AT 9:00 AM  
18

19  
20  
21  
22  
23  
24  
25 REPORTED BY: KRISTI LYNN EVANS, RPR, CSR NO. 661

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1 Q. You have over the years flown many times with  
2 Fish and Game employees?

3 A. Many Fish and Game employees.

4 Q. What types of flights would Fish and Game ask  
5 you to do?

6 A. Mostly survey flights, some capture.

7 Q. Would that be mostly wildlife survey flights?

8 A. Correct.

9 Q. As opposed to fish or redds, redd counting  
10 survey flights?

11 A. Mostly game.

12 Q. And when Fish and Game would do a survey  
13 flight would there generally be two Fish and Game  
14 employees in the helicopter?

15 A. Generally.

16 Q. Would one generally be in charge and the  
17 other be in a secondary role?

18 A. There are two crew members; one primary  
19 observer, one secondary observer.

20 Q. In your experience what does the primary  
21 observer do?

22 A. The primary observer's job is to have eyes  
23 out observing the animals.

24 Q. What's the secondary observer's job?

25 A. To document the data.

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1 Q. How do they normally document the data?

2 A. On whichever medium they provide. It is  
3 their own forms.

4 Q. Pen and paper?

5 A. Yes, most of the time.

6 Q. Computer type tablet?

7 A. Some.

8 Q. Any other way they would document the  
9 information?

10 A. Voice recorder.

11 Q. They dictate into a portable dictation unit?

12 A. Yes.

13 Q. Have you ever done Salmon Redd surveys on the  
14 Selway?

15 A. Yes.

16 Q. Is that done generally a particular time of  
17 the year?

18 A. Yes.

19 Q. Is that generally a one-day, two-day type  
20 thing?

21 A. One day typically.

22 Q. Now, when you purchased Leading Edge and  
23 Valley Helicopter was the Hiller helicopter a part of  
24 the transaction that was involved in this crash?

25 A. Can you narrow that down? Which one, Valley

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1 Helicopter or Leading Edge?

2 Q. Let's start with Valley Helicopter.

3 A. Valley Helicopter was purchased with the  
4 aircraft as an asset.

5 Q. Which included the Hiller; is that correct?

6 A. Yes.

7 Q. And when I say the Hiller, I'm referring to  
8 the one that was involved in the crash in August of  
9 2010, okay?

10 A. 67264.

11 Q. 67264. Now, do you know how much time you  
12 have operating 67264?

13 A. I would have to guess. I don't have any  
14 information in front of me.

15 Q. Do you have any approximation how much time  
16 you have operating the 67264?

17 A. 2500 hours.

18 Q. What type of role did 67264 play in your  
19 operation?

20 MR. SCHOEGGL: At what time?

21 Q. (By Mr. Callery) Let's say within last two  
22 years prior to the crash.

23 A. A diminishing role in the company until I  
24 employed Perry.

25 Q. And why was it a diminishing role?

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1 A. The Hughes 500 took center stage.

2 Q. And why would it take center stage?

3 A. It's more enjoyable to fly.

4 Q. A bigger helicopter?

5 A. Nicer.

6 Q. Newer?

7 A. Newer.

8 Q. Well, let me ask you this: When did you  
9 start to employ Perry, Perry Krinitt?

10 A. Effectively as a pilot the fall before the  
11 accident.

12 Q. The fall of 2009?

13 A. Yes, I believe so. I would have to check my  
14 records to get the dates.

15 Q. When you say effectively had you employed him  
16 on a temporary basis prior to 2009?

17 A. Yes.

18 Q. Had you employed him as a helicopter pilot  
19 prior to 2009?

20 A. I don't recall. I don't know.

21 Q. Would you have employed him as a mechanic?

22 A. I employed Perry as a mechanic for a brief  
23 time period, in 2000 time period, to work on a Huey.

24 Q. In the year 2000?

25 A. Approximately in that timeframe.

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1 not original equipment, correct?

2 A. It was original equipment.

3 Q. It was? Was the latching mechanism original  
4 equipment?

5 A. According to the 337.

6 Q. Okay. Was it original from the factory?

7 A. Which factory?

8 Q. I don't know. The Hiller factory?

9 A. No.

10 Q. Were you involved in the installation of the  
11 bubble doors on 67264?

12 A. No.

13 Q. Do you know who was involved in that  
14 installation?

15 A. James R. Pope.

16 Q. Your father?

17 A. (Nods head affirmatively.)

18 Q. Is that a yes?

19 A. Yes.

20 Q. Did you have an ownership interest in Leading  
21 Edge or Valley Helicopter at the time that the bubble  
22 doors were installed?

23 A. Yes, Leading Edge Aviation.

24 Q. Okay. Leading Edge but not Valley  
25 Helicopter?

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- 1 A. Not Valley.
- 2 Q. You had not yet purchased Valley Helicopter?
- 3 A. That's correct.
- 4 Q. Did your father consult with you about the
- 5 installation of the bubble doors?
- 6 A. Nope.
- 7 Q. Did you have any input on that project?
- 8 A. Nope -- no.
- 9 Q. Were you operating 67264 at the time?
- 10 A. No.
- 11 Q. Did your father ever tell you why he had the
- 12 bubble door installation made?
- 13 A. The same reasons I gave you previously:
- 14 Visibilty and room and bad doors.
- 15 Q. Had there been problems with the original
- 16 door latch to the point that he wanted to make a
- 17 modification?
- 18 A. I assume.
- 19 Q. If you know.
- 20 A. I would assume that would be one of the
- 21 primary reasons.
- 22 Q. The inadvertent door opening?
- 23 A. (Nods head affirmatively.)
- 24 Q. Is that a yes?
- 25 A. That is a yes.

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1 response to Mr. Callery's questions that you weren't  
2 aware until after the accident there was a difference  
3 between one striker plate being steel and the other is  
4 aluminum. That didn't catch your eye at that time when  
5 you looked at it, or did you look at it?

6 A. I did not notice a difference between the  
7 sticker plates until after the accident and it was  
8 brought to my attention.

9 Q. Who brought it to your attention?

10 A. I believe it was after the wreckage  
11 investigation and photos were taken.

12 Q. Okay. So your first time was when you saw  
13 photos of the two striker plates?

14 A. That's correct.

15 Q. When would that have been relative to the  
16 accident? Give me a timeframe.

17 A. Whenever the wreckage inspection occurred, I  
18 think I saw photos of the wreckage at the storage  
19 facility, and it was probably brought to my attention  
20 by my lawyer.

21 Q. And when you saw that did you have any -- did  
22 you wonder why aluminum was used? Why there was an  
23 aluminum striker plate on one side and steel on the  
24 other when that was first brought to your attention by  
25 whoever?

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1 A. Did I wonder?

2 Q. Yeah. Why there was two different materials.

3 A. Yeah.

4 Q. And what did you wonder, for lack of a better  
5 way of saying it?

6 A. Wondered why there was two different  
7 materials used for.

8 Q. Okay. Did you ask anybody? Did you ask Mr.  
9 Bloodsworth about that, if he's the one that did that?

10 A. No.

11 Q. Why not?

12 A. There isn't a point at this time. I mean,  
13 you are asking that question, and it will come out.

14 Q. I'm not sure what you mean by that.

15 A. Well, I don't know what the answer is. Was  
16 it there before or not, I don't know.

17 Q. If Mr. Craviotto testified in his deposition,  
18 as I understood it, that he didn't put a steel striker  
19 plate on one side and aluminum striker plate on the  
20 other side, do you have any reason to doubt his  
21 testimony?

22 A. No.

23 Q. All right. So, do you think Mr. Bloodsworth  
24 did that, then?

25 A. I don't know.

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1 correct?

2 A. That is correct.

3 Q. Okay, and can you give me an approximate  
4 timeframe as to when that occurred?

5 A. I would have to look at the sales documents  
6 on that. I'm very bad with dates and numbers.

7 Q. Well before this crash, I assume.

8 A. Well before.

9 Q. All right, and at the time of this crash,  
10 this incident in 2010, what helicopters were owned and  
11 operated by your companies, either Valley or Leading  
12 Edge, besides the Hiller and you've mentioned this --  
13 I've spaced out -- the Hughes?

14 A. Hughes 500D, a Robinson R44, and a UH1H Huey.

15 Q. Let me talk a little bit about the history of  
16 this Hiller again. As I understand -- I was just  
17 reviewing the report. The Hiller was originally  
18 manufactured -- this particular helicopter was a four  
19 seat configuration; is that correct?

20 A. I believe so.

21 Q. Okay. That would be, what, two and two, two  
22 front, two rear?

23 A. Three and one.

24 Q. Three and one, kind of like a jump seat,  
25 then, behind --

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1 A. The pilot would be ahead of the three  
2 passengers. It is actually a conversion.

3 Q. The four seat is a conversion or what is  
4 there is the conversion?

5 A. It is both to convert for a four seat or four  
6 seat back to a three seat.

7 Q. So, in the process of conversion the four  
8 seat, the pilot seat, was eliminated and you just have  
9 the bench seat, then, for the three?

10 A. That is correct.

11 Q. And then if I understood correctly at some  
12 point in time the engine was converted from a piston to  
13 a turbine; is that correct?

14 A. That's correct.

15 Q. And these conversions all took place well  
16 before your ownership interest; is that correct?

17 A. Yes.

18 Q. And then we know from some of the documents  
19 that -- by the way, did you review Mr. Craviotto's  
20 deposition as part of your preparation for your  
21 deposition?

22 A. No.

23 Q. We know from his testimony that he was the  
24 one that installed the bubble doors on this helicopter,  
25 the helicopter sometime 2002, 2003 timeframe, all

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1 Q. So when you've had an inadvertent door  
2 opening it's simply been grab the handle and shut it?  
3 A. It is as easy to close as a lid on a laptop.  
4 Q. Doesn't take any great deal of strength?  
5 A. (Shakes head negatively.)  
6 Q. You have to answer verbally. You shook your  
7 head no.  
8 A. Yes, I shook my head no, but the answer is,  
9 no, it does not take any great deal of strength or any  
10 super human tricks.  
11 Q. Did the door open -- prior to the bubble  
12 doors being installed did the Hiller 67264 -- did you  
13 experience inadvertent door openings with the standard  
14 Hiller supplied doors?  
15 A. Yes.  
16 Q. Okay. Can you compare the frequency between  
17 the inadvertent opening with the standard doors and the  
18 bubble doors?  
19 A. Way more frequent with the standard Hiller  
20 doors.  
21 Q. Do you have an opinion as to why that is?  
22 A. The doors are junk.  
23 Q. Okay. The standard --  
24 A. The standard Hiller doors are not built well.  
25 Q. Can you be more specific?

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1           A. The latching mechanism on a Hiller door is in  
2 a poor position for the passenger, and it's an awkward  
3 opening motion. The mechanical buildup of the door,  
4 3/16th steel rod to the handle to a pin, which is a  
5 block pin which is designed to slide into a receiver,  
6 is inadequate and wears at a high rate due to the  
7 vibration of the aircraft. It is not built strong  
8 enough.

9           Q. You compare that door latching mechanism to  
10 other helicopters, you find the original Hiller  
11 installation inadequate?

12          A. Yes.

13          Q. Are there other helicopters that have similar  
14 type latching mechanism than the original Hiller door?

15          MR. SCHOEGGL: Are you asking about his  
16 knowledge?

17          Q. (By Mr. Callery) Yeah. Sure.

18          A. Most other helicopters have more than one  
19 single point latch system. Hughes 500 has four to  
20 five. Bell has usually three. The Hiller has one.

21          Q. What do you mean by has five latch systems.  
22 What do you mean?

23          A. Point of contact between the door and the  
24 airframe for latching mechanism.

25          Q. The bubble door on 67264 when it crashed was

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IN THE SECOND JUDICIAL DISTRICT,  
SITTING WITHIN AND FOR LEWIS COUNTY,  
STATE OF IDAHO

PERRY KRINITT and	)	
ERYN KRINITT PERALTA,	)	
	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	NO. CV 2012-146
	)	
IDAHO DEPARTMENT OF	)	
FISH AND GAME, and	)	
STATE OF IDAHO,	)	
	)	
Defendants.	)	

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TRANSCRIPT OF THE DEPOSITION OF LUKE RINEBOLD  
HAD ON THE 25TH DAY OF SEPTEMBER, 2013, AT 3:15 PM

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REPORTED BY: KRISTI LYNN EVANS, RPR, CSR NO. 661

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1 Q. Only Clearwater?

2 A. Yes.

3 Q. What were your hours for Clearwater in August  
4 of 2010, if you remember? Was that a full-time job? I  
5 guess that's my question.

6 A. Yes, it is a full-time job, 40 hours a week.

7 Q. I didn't introduce myself. I'm Charley  
8 Carpenter, and I represent one of the parties in one of  
9 the lawsuits that arises out of a helicopter crash that  
10 was in Kamiah in 2010. Did you witness the helicopter  
11 crash in Kamiah in August of 2010?

12 A. Yes.

13 Q. What were you doing in Kamiah that day?

14 A. We were working at a retirement home putting  
15 in a great big sprinkler system for like a week up  
16 there. That was one of the days we were up there so --

17 Q. What were you doing when you first saw the  
18 helicopter on that day?

19 A. I was digging a hole on the -- kind of been  
20 the northwest corner of the Burkhart Homes in Kamiah,  
21 and I heard the helicopter coming. So, that's what I  
22 was doing. I was working on that corner of the  
23 building.

24 Q. When you heard it did you look up  
25 immediately?

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1           A. Yeah, yep. I heard it before I saw it. You  
2 know, it is a loud helicopter so I heard it coming  
3 before I seen it come over the ridge so --  
4           Q. How long had you been hearing it before you  
5 saw it?  
6           A. Oh, not that long, maybe a minute, minute or  
7 two.  
8           Q. Was there a time when you were looking at the  
9 ridge and you could hear it but could not see it?  
10          A. Yes.  
11          Q. When you first saw the helicopter did you  
12 recognize it?  
13          A. No.  
14          Q. Which way was the helicopter going?  
15          A. Oh, kind of east.  
16          Q. Was it coming towards you or --  
17          A. Yeah.  
18          Q. Directly towards you or obliquely?  
19          A. It was kind of coming to my -- well, I don't  
20 know. If I was facing it it would have been coming not  
21 straight at me but more like, you know, 7:00 or  
22 something, I guess, a little bit of an angle.  
23          Q. From your left to your right?  
24          A. From my right to my left. Does that make  
25 sense?

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1 Q. Well, if you can recall. Put yourself where  
2 you were standing and what you were seeing.

3 A. Yeah. It was coming from my right, slightly  
4 to my left, not straight at me but at an angle.

5 Q. Okay. Was it flying at a constant speed and  
6 a constant elevation?

7 A. Yeah. When it came over the ridge it was  
8 pretty high, I noticed, and as it came over that ridge  
9 and it started getting about to the edge of town there  
10 it slowly started descending like it was going to come  
11 and land in town there somewhere. And I don't even  
12 know where the airport is there in town, but they did  
13 start -- once they got to the edge of town there they  
14 started descending down in.

15 Q. You were watching the helicopter fly?

16 A. Uh-huh (affirmative.)

17 Q. What happened next?

18 A. Well, I watched it for a while, and then I  
19 just went back to digging and until I heard that big  
20 loud bang. You know, at that point it had -- I don't  
21 know how to -- it probably come down a few hundred  
22 feet, 3 or 400 feet, I would say, and of course, like I  
23 said, I went back to digging. And they were still  
24 coming down in, and I heard the bang. And I looked up,  
25 and I seen a piece floating off the tail rotor, where

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1 the tail rotor is, there was a piece floating off of  
2 that. So, I kind of kept my eye on that piece watching  
3 where it went and watched the helicopter as it was  
4 crashing.

5 Q. How far away from you was the helicopter when  
6 you heard the bang?

7 A. I would say approximately 8 to 900 yards.

8 Q. And was it still coming -- I guess you  
9 weren't looking when you heard the bang, right?

10 A. Correct.

11 Q. So when you looked up how was the helicopter  
12 flying? Was it still coming towards you a little  
13 obliquely?

14 A. Yep. It was still just slowly descending,  
15 and as I heard the bang it turned, you know, a little  
16 bit towards to the south, you know. And from there it  
17 started spinning back and forth as it was coming down  
18 (indicating.)

19 Q. And did you stay watching the helicopter?

20 A. Yeah.

21 Q. And you watched a piece of something come  
22 down?

23 A. Yeah. I didn't know -- I couldn't tell what  
24 it was, but I kind of kept my eye on it so I could see  
25 where it landed as I was watching the helicopter. And

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1 then after it wrecked I ran over there, and I got that  
2 piece first. And then we went over to look at the  
3 wreck.

4 Q. We are going to take this really slowly and  
5 then each of us will get a chance --

6 A. Sure.

7 Q. -- to take you through each little piece.

8 A. Sure.

9 Q. So, let's starts again at the bang.

10 A. Okay.

11 Q. And now, just second by second, if you can  
12 tell me what you were seeing. The helicopter made a  
13 turn to the south?

14 A. Yeah. After the bang it started -- slowly  
15 turned to the south, facing the south, and from there  
16 it just started spinning, you know. It didn't spin all  
17 the way around. It spun back and forth as it was  
18 coming down (indicating.)

19 Q. Fishtailing, you would call it, with a truck?

20 A. Yep, yep. Left and right as it was coming  
21 down (indicating.)

22 Q. And it was traveling in a southerly  
23 direction?

24 A. Yeah. It's still pretty much headed east.  
25 Just after the bang it looked like it was turned to the

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1 south, you know. After the bang it turned to the  
2 south, and then from there it was still headed east but  
3 turning, like you said, fishtailing as it was coming  
4 down.

5 Q. Was it coming down rapidly or was it holding  
6 altitude?

7 A. No. It was holding altitude until, you know,  
8 half of the distance to the ground. From the bang,  
9 half the distance to the ground it held, it looked like  
10 it, you know.

11 Q. You mean it was a smooth descent?

12 A. Well, it was spinning back and forth, but it  
13 wasn't falling. So, it was coming down slowly spinning  
14 back and forth, and then the second half it is like he  
15 lost his lift and just fell (indicating.)

16 Q. And you saw that?

17 A. Uh-huh (affirmative.)

18 Q. Did the helicopter spin before it fell? Spin  
19 all the way around?

20 A. I don't remember it ever spinning all the way  
21 around. It just spun back and forth as it was coming  
22 down (indicating.)

23 Q. Could you see the people in the helicopter?

24 A. At one point as it was spinning it came  
25 around and there was -- the right side of the

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1 helicopter there was a guy that had the door open  
2 (indicating.) And I don't know what he was doing. It  
3 looked like he was going to try to jump or something.  
4 They were still way up there. And he had the door  
5 open, and I could see him for a second. And I don't  
6 know if it was trying to fix something or do something  
7 or whatever he was doing, and then it spun back around  
8 where I couldn't see him. And then when it came back  
9 around where I could see that side again he was back in  
10 the helicopter with the door closed.

11 Q. What parts of the guy could you see?

12 A. I could just -- I could see his helmet, and  
13 he had -- I'm color blind -- it was either a brown or a  
14 green suit. So -- and that's it. I could just see  
15 kind of his suit, his arm, and his helmet.

16 Q. And from the perspective of the -- you know,  
17 if you were in the helicopter looking forward was this  
18 the right or the left door?

19 A. The right door.

20 Q. Did you see the door open or was it --

21 A. No.

22 Q. -- open when you saw it?

23 A. It was open when it spun around to where I  
24 could see it.

25 Q. Had you been able to see the right side door

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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEWIS

Perry Krinitt,  
Plaintiff/ Appellant

vs.

State of Idaho Department of  
Fish and Game and  
State of Idaho,  
Defendant/ Respondent.

CASE NO. CV-2012-146  
Supreme Court No. 42417-2014

Supplemental Certificate of Mailing

I, the undersigned, a Deputy Clerk of the above entitled  
Court, do hereby certify that a copy of the Supplemental Clerk's  
Record was mailed on 31<sup>ST</sup> day of OCT, 2014 to the following  
persons:

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210 N Higgins Ave  
Missoula MT 59802

Peter J Johnson  
103 E Indiana Suite A  
Spokane WA 99207-2317

CATHY DARSON, CLERK

by Nicole Kinzer  
Nicole Kinzer  
Deputy Clerk

